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<u>Doc. No.</u>	<u>Def. No.</u>	<u>Pros. No.</u>	<u>Description</u>	<u>For Ident.</u>	<u>In Evidence</u>
2564	3390		Affidavit of TANAKA, Takeo		32528
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3229		3392	Certificate re Death of KITA, Seichi, former General of the Japanese Army, Japanese POW, who died in Habarovsk, USSR 7 August 1947		32557
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(cont'd)

<u>Doc.</u> <u>No.</u>	<u>Def.</u> <u>No.</u>	<u>Pros.</u> <u>No.</u>	<u>Description</u>	<u>For</u> <u>Ident.</u>	<u>In</u> <u>Evidence</u>
2714	3396		Affidavit of NISHIJIMA, Takeshi		32609
2715	3397		Instructions distributed among the entire Central China Expeditionary Forces on 18 December 1937 by MATSUI, Commander of the Central China Ex- peditionary Forces		32616
2764	3397-A		Certificate of non-availability of original of the above- mentioned documents		32616
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Thursday, 6 November 1947

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INTERNATIONAL MILITARY TRIBUNAL
FOR THE FAR EAST
Court House of the Tribunal
War Ministry Building
Tokyo, Japan

The Tribunal met, pursuant to adjournment,
at 0930.

- - -

Appearances:

For the Tribunal, all Members sitting, with
the exception of: HONORABLE JUSTICE R. B. PAL, Member
from India, not sitting from 0930 to 1600; HONORABLE
JUSTICE E. H. NORTHCROFT, Member from the Dominion of
New Zealand, not sitting from 1330 to 1600.

For the Prosecution Section, same as before.

For the Defense Section, same as before.

- - -

(English to Japanese and Japanese
to English interpretation was made by the
Language Section, INTFE.)

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1 MARSHAL OF THE COURT: The International
2 Military Tribunal for the Far East is now in session.

3 THE PRESIDENT: All of the accused are pre-
4 sent except MATSUI and OSHIMA, who are represented by
5 counsel. The prison surgeon at Sugamo certifies that
6 MATSUI is too ill to attend the trial today. His cer-
7 tificate will be recorded and filed.

8 With the Tribunal's permission the accused
9 OSHIMA will be absent from the courtroom for the
10 whole of the morning session conferring with his
11 counsel.

12 LANGUAGE ARBITER (Captain Kraft): If the
13 Tribunal please, we submit the following language
14 correction. Reference: Exhibit 3388, page 2,
15 line 16. Delete "the likes of" and substitute
16 "even such a thing as."
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1 T A K E O T A N A K A, called as a witness on
2 behalf of the defense, resumed the stand and
3 testified through Japanese interpreters as
4 follows:

5 DIRECT EXAMINATION

6 MR. BROOKS: May defense document 2564 be
7 given an exhibit number?

8 CLERK OF THE COURT: Defense document 2564
9 will receive exhibit No. 3390.

10 (Whereupon, the document above re-
11 ferred to was marked defense exhibit No. 3390
12 and received in evidence.)

13 MR. BROOKS: I will now read defense document
14 2564, exhibit No. 3390, omitting the formal and ex-
15 cepted parts.

16 "In the 45th year of Meiji (1912), I was
17 graduated from the Meiji University, and after passing
18 the civil service examination, entered the government
19 service.

20 "I was appointed the Secretary of the Govern-
21 ment-General of Korea in 1919, was appointed the Di-
22 rector of the Police Affairs Bureau of the same
23 Government-General in 1936, and, after retiring from
24 the service in September of the same year, returned
25 to Japan and was out of service. Then I was appointed

1 the Vice-Minister for Overseas Affairs in April of
2 1939, and resigned the post in October of 1940. I
3 was appointed the Civil Governor of the Government-
4 General of Korea in May of 1942, and as soon as I
5 resigned in July of 1944 and returned home, I was
6 appointed the Secretary-General to the Cabinet.
7 Later I resigned the post of the Secretary-General
8 on February 1, 1945, and was nominated to the House
9 of Peers. I resigned from the House of Peers in
10 February of 1946.

11 "It was since about August of 1932 that I
12 became acquainted with General KOISO, but my political
13 connection with him began in April of 1939, when the
14 General was appointed the Minister for Overseas Affairs
15 in the HIRANUMA Cabinet, and I served as the Vice-
16 Minister under him. Since then I have been acquainted
17 with him until this day. Therefore, I will refer to
18 the following points concerning the General.

19 "1. The General's view on the so-called
20 southward expansion question.

21 "When the General was the Minister for Over-
22 seas Affairs, namely, between 1939 and 1940, the so-
23 called southward expansion question, that is, economic
24 expansion in the southern area was sought, became a
25 subject of much discussion in the country. Just at

1 that time the HIRANUMA Cabinet was in power and the
2 question how to determine the attitude toward the
3 Japanese-German-Italy Tri-Partite Alliance, as well
4 as that of southward expansion, were befalling the
5 government as the matters of national importance. In
6 addition, the government's attitude toward these ques-
7 tions was so serious a matter as would decide the course
8 of our country that every foreign nation was, with
9 keen eyesight, watching the movements of our state. So
10 I would like to elucidate the General's attitude toward
11 these two questions. The cabinet of the time made it
12 a rule to hold the Five Ministers' Conference, to-wit,
13 another meeting by the Premier and Ministers of War,
14 Navy, Foreign Affairs and Finance, besides the Cabinet
15 Meeting, and to talk over very important matters.

16 "The Tri-Partite Alliance question was, of
17 course, discussed and studied in this Conference. The
18 Minister of Overseas Affairs, however, was not a member
19 of the Conference and was nothing but an outsider holding
20 a sinecure. So he was never consulted about any matter
21 as a member of the cabinet. But the General held, as
22 his private opinion that in view of the complicated
23 international situation our foreign policy was not so
24 simple as to be necessarily pro-Italo-German, if not
25 pro-Anglo-American; or to be essentially

1 pro-Anglo-American, if not pro-Italo-German. That is
2 to say, it could not be that our foreign policy should
3 be either the right or the left.

4 "Therefore proper steps should be taken lest
5 we should remorse in future for our erroneously direct-
6 ing the course of the state by taking rash actions now.
7 KOISO expressed himself to the effect that it was ad-
8 visable at this moment to give up concluding the al-
9 liance in order to avoid producing such unfavorable
10 results as to be vainly made use of by Germany. On
11 one occasion KOISO stated this view opposing the for-
12 eign alliance privately to the Premier and the Foreign
13 Minister. As regards the southward economic expansion
14 question he was of opinion that the aimless advocacy
15 of the southward economic expansion was liable to make
16 the foreign nations mistake our intention for that of
17 expanding to the southern area with territorial ambi-
18 tions, and if so, it would be greatly different from
19 our true intention; that accordingly the necessity
20 of our economic expansion must be explained with such
21 an attitude of mind as convincing everyone of the
22 necessity for reasonable economic expansion of our
23 nation, and that for that purpose the dogged advocacy
24 of the southward economic expansion would not do, but
25 so long as the expansion was a reasonable and economic

1 one for the sake of our nation's self-support, expansion
2 either to the south or to the north will do, and
3 it was not always necessary to emphasize a one-sided
4 view. The General also held the view on population
5 problems that it would be difficult to encourage a large
6 population of Japanese to emigrate to the southern
7 areas as, in the light of the actual results in the
8 past, the southern climate did not seem to suit the
9 Japanese.

10 "2. His state of mind and determination
11 when he accepted the Imperial Command to form a
12 cabinet.

13 "It was on July 18th of 1944 that General
14 KOISO was summoned by the Throne to be ordered to form a
15 new cabinet. The General, at that time at his post as
16 the Governor-General of Korea, was informed of nothing
17 about the war situation except from official announce-
18 ments by the Army and Government. Various informa-
19 tions, however, made us feel that the fact was that the
20 war situation was more unfavorable for Japan than was
21 announced and that the naval power had sustained heavy
22 losses, for, at this juncture, the fall of Saipan was
23 officially announced. Therefore, not only were we
24 deeply impressed that the war situation was really
25 unfavorable, but also felt that most of the gloomy

news which had come to our ears in the past should
1 have been true. On the other hand, the general public,
2 who had up to that time half believed and half doubted
3 various rumors about the unfavorable war situation of
4 our country, began about this time to be pessimistic
5 about the prospects of war rather than deeply suspicious
6 about it. Such a state of things was not merely
7 in Korea but also even at home. It was only natural
8 that it should have been the case in Korea. Under
9 these circumstances General KOISO accepted the Imperial
10 Command to form a new cabinet. When at first he received
11 a telephone call from the Grand Chamberlain
12 about the Imperial Summons, the General said that if
13 the Emperor would by any chance order him to form a
14 new cabinet he had to give serious consideration to
15 what sort of resolution he ought to make in forming a
16 cabinet. Therefore, after most careful consideration,
17 he determined to form a new cabinet according to the
18 principles as outlined below, to-wit:
19

20 "A. At present the war situation is very
21 unfavorable for us. We are now defeated and in retreat,
22 and now that even Saipan fell already into the enemy's
23 hands, the prospects of war are really serious. Although
24 we have, of course, an eager desire to survive
25 by exhausting every means, it will be most difficult

1 to do so because of the present circumstances of being
2 overwhelmed by the enemy in the armed conflicts, and
3 because of successive lowering of production in the
4 industrial warfare.

5 "A farsighted national policy seriously
6 required us not only to hold in check in any way the
7 enemy's rushing force at this moment, but also to take
8 a cool view of how to bring the war to a conclusion.
9 The question rather lies here. For that purpose it is
10 a matter of the greatest urgency to win the hearts of
11 our people which are recently apt to be alienated from
12 the government, and the conditions of the armed con-
13 flict and of the economic warfare, the people only
14 become depressed in spirit, and it is feared that,
15 whatever attempt the government may make, it could
16 have no influence nor authority over the people. Such
17 being the case, he felt confident of the absolute
18 necessity of bracing up our people in order to increase
19 the productive power by anyhow smashing the enemy's
20 scheme for invasion and of gaining some time there to
21 take steps to negotiate peace on full scale through
22 the third powers, including the Soviet Union, as well
23 as to proceed with a prompt peace move toward China.'

24 "B. In order to accomplish the above purpose
25 he stated that the Prime Minister, assuming the

1 stewardship of state affairs, must effect a strong
2 adjustment and combination of both the political and
3 military tactics from the standpoint of the whole of
4 the state affairs, otherwise perfect administration of
5 the state affairs could not be realized in bringing to
6 a conclusion this great war. Accordingly, the head
7 of the cabinet at this moment ought to be placed in a
8 position enabling him to perform such function.'

9 "He came up to Tokyo with these thoughts we
10 had discussed in mind and with the serious determina-
11 tion given above.

12 "After having an audience with His Majesty
13 he was ordered to form a new cabinet together with
14 Admiral YONAI, so he acted up to his original principle.
15 He intended to assign the portfolio of Navy to Admiral
16 YONAI, and hoped to secure a Minister of War who would
17 help carry out their program to establish peace.

18 "In addition, he expressed his resolution that
19 he wished to decide whether or no he would comply with
20 the Imperial Command to form a new cabinet on condition
21 that the ordinance concerned should be revised at that
22 moment so as to qualify the Premier for attending the
23 meetings of the Imperial Headquarters, or else that
24 a strong and simple organ of directing the war affairs
25 should be established with a few persons as its members.

1 He received a promise that a definite answer might be
2 given. To this the Army, after Three Chief's Confer-
3 ence, replied that the war should be carried on, that
4 Field Marshal SUGIYAMA would be recommended for the
5 portfolio of the Army, and that as to the creation of
6 the War Direction Council they would meet the General's
7 desire. On the part of the Navy a reply was made to
8 the effect that the post of the Navy Minister should
9 be assigned to YONAI, and that they had no objection
10 to creating the said council. Then KOISO, after con-
11 sulting with Admiral YONAI, decided to approve of them
12 and completed the formation of the cabinet.

13 "3. The organization of the Supreme War
14 Direction Council and the actual condition of its opera-
15 tion.
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1 "The members of this council were the Chief of
2 the Army General Staff and the Chief of the Naval General
3 Staff, the Minister of War, the Minister of Navy, the
4 Prime Minister and the Minister for Foreign Affairs, the
5 Secretaries being the Secretary-General to the Cabinet,
6 the Director of the Military Affairs Bureau and the
7 Director of the Naval Affairs Bureau. It was decided
8 that besides them, both the Vice-Chiefs of the General
9 Staffs of the Army and Navy might attend the Council on
10 proper occasions and that the members of the cabinet
11 concerned were to attend it according to the contents
12 of the subjects. It was also decided that, when the war
13 situation was reported, every member of the Cabinet,
14 the Director of the Legislation Bureau and the Director
15 of the Planning Bureau were also to attend. The main
16 matters to be discussed in the council related to the
17 harmonization and adjustment between the Supreme Command
18 and state affairs. In this council there were no chair-
19 men or such like, but the Premier was to be charged with
20 the expediting the proceedings.
21

22 "The main points of the council was the harmon-
23 ization and adjustment between the supreme command and
24 state affairs as given above.

25 "As for the secrets of operations and tactics
concerning the war, the Premier was not able to touch

1 them but was a total outsider. As, nevertheless,
2 Premier KOISO happened to be a General, he sometimes
3 questioned and expressed his views about the matters
4 relating to the details of operations. Generally speak-
5 ing, however, an attitude not desiring to have the
6 Premier meddle with the tactical affairs was found among
7 the officers of the Army and Navy including the members
8 of the Council. They challenged him when he wished to
9 touch their secrets. The movements and the degree of
10 damages of the Combined Fleet, for instance, were in no
11 case informed of. Concerning the operations of the front
12 lines of the Army and Navy, he only heard of the general
13 war situation, when it was reported, in company to the
14 cabinet colleagues.

15 "In short, the Premier had a great expectation
16 at the outset for the council, and yet the actual cir-
17 cumstances were, as mentioned above, against his expec-
18 tation. Such being the case, since it was impossible
19 to materialize the primary principle decided at the time
20 of forming the cabinet, KOISO finally asked the Throne
21 to issue an Imperial order authorizing the Premier to
22 attend the conferences of the Imperial Headquarters.

23 "However, as for his attending the Imperial
24 Headquarters, the authority of the Premier was confined
25 to being informed of the condition of operations and

1 tactics and he was not vested with the authority to set
2 forth his view and to have a share in the discussions
3 in the conference on operations and tactics. Therefore,
4 KOISO was not placed in the position at which he could
5 have his views from a standpoint of the general state
6 affairs reflect on the direction of the front line.
7 Now the Premier discussed the idea that after all that it
8 would be impossible to carry forward his ideas for end-
9 ing the war, unless he would return to actual service
10 and hold the additional portfolio of War Minister, to
11 perfect the adjustment of the supreme command to the
12 state affairs. He took steps to get this power but in
13 spite of his effort to get back on the active list of
14 the army so he could hold the concurrent portfolio of
15 War Minister he could not obtain approval necessary from
16 the Three Chiefs of the Army. By the way, I would like
17 to add here a special remark. It is that Premier
18 KOISO took pains, in the Supreme War Direction Council,
19 for making the moves toward the Soviet Union and China
20 relative to concluding the war.

21 "4. The general's view and attitude in regard
22 to the disposition of the China Affair.

23 "The General's view on the China Affair was as
24 follows:

25 "Originally speaking, Japan ought not rashly

1 tactics and he was not vested with the authority to set
2 forth his view and to have a share in the discussions
3 in the conference on operations and tactics. Therefore,
4 KOISO was not placed in the position at which he could
5 have his views from a standpoint of the general state
6 affairs reflect on the direction of the front line.
7 Now the Premier discussed the idea that after all that it
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12 state affairs. He took steps to get this power but in
13 spite of his effort to get back on the active list of
14 the army so he could hold the concurrent portfolio of
15 War Minister he could not obtain approval necessary from
16 the Three Chiefs of the Army. By the way, I would like
17 to add here a special remark. It is that Premier
18 KOISO took pains, in the Supreme War Direction Council,
19 for making the moves toward the Soviet Union and China
20 relative to concluding the war.

21 "4. The general's view and attitude in regard
22 to the disposition of the China Affair.

23 "The General's view on the China Affair was as
24 follows:

25 "Originally speaking, Japan ought not rashly

1 meddle in China. It is inevitable that once Japan is
2 involved in China she will be drifted into a fix as if
3 stepping into a swamp. Accordingly, we ought, for Japan's
4 sake, to be most cautious against wasting our national
5 power, being plunged in such a sad plight. Unfortunately,
6 ly, however, that Japan and China became at war with
7 each other is really so deplorable a matter that we
8 must lose no time in recovering peace and restoring the
9 relation of true cooperation to both States.'

10 "This view which he had held consistently could
11 not manifest itself in concrete actions till the General
12 assumed the premiership. On his being appointed Premier
13 later, he firmly urged this view onward. Namely, he,
14 while in office as the Premier, left nothing undone to
15 try to succeed in a peace move toward the Chungking
16 Government. Also in the Supreme War Direction Council,
17 he repeated deliberation on this matter, taking pains
18 over materializing his original intention, but he
19 failed in the end due to various circumstances that will
20 be explained. For instance I think that Miu Pin Issue,
21 one of the movements of the KOISO Cabinet to restore
22 peace, serves the purpose of proving how the General
23 was intent on the realization of peace with China, apart
24 from the questions whether or not he dealt with the
25 issue adroitly and what its outcome was.

1 "I would like here to explain the Miu Pin Issue.
2 The said man named Miu Pin was of Central China and once
3 served as the Vice-President of the Hsin-Min-Hui (New
4 Nation Association) of North China. He was later
5 appointed the President of the Legislative Yuan (Bureau)
6 of the Nanking Government and then relegated to the Vice-
7 President of the Examination Yuan (Bureau). As he was
8 once the instructor at the Huangpu Military Academy,
9 he had a considerable acquaintance with those army men
10 around Chiang Kia-shek and seemed to have been intimate
11 with, for instance, Yo Ying-chin. He visited this
12 country in 1939 when he was the Vice-President of the
13 Hsin-Min-Hui. On that occasion, General KOISO met him
14 by my introduction. Miu unbosomed himself, explaining
15 the reason for the real necessity of cooperation between
16 Japan and China, so there was much sympathy between
17 them. Ever since they had no particular connection with
18 each other. After the General assumed the premiership,
19 however, he was urged by Minister of State OGATA to
20 send for Miu Pin to hear his opinion about the peace
21 question between the two countries. On the part of
22 Premier KOISO, it happened that, as the diplomatic
23 operations toward Chungking came to all but a deadlock,
24 he, as the Premier, was very worried at heart about it
25 and was desirous of breaking it by some means. Therefore

1 he thought that, although it was uncertain how much
2 influence Miu Pin should have upon the Chungking Govern-
3 ment, it should be fortunate if he would be of any use
4 to settling the peace question between Japan and China
5 and that, if a step was taken further and a direct
6 connection could be established with Chungking, it should
7 be still more favorable. With such an idea, he took
8 Minister OGATA's advice and tried to first bring him
9 to Japan to hear his opinion well and then to decide
10 our attitude and policy concerning whether or not they
11 should make use of him. However, as a result of this
12 plan having met with the opposition from both the Army
13 and diplomatic circles, everything came to a deadlock
14 and ended in failure except the success in bringing
15 Miu Pin to Japan. In consequence, the said Miu returned
16 to Nanking in vain.

17 "KOISO also took great pains in order to bring
18 about peace at large through the medium of the Soviet
19 Union. Not only did he make moves in various ways at
20 home but also the negotiations were entered into with
21 the Soviet Union, but unfortunately they ended in
22 failure.

23 "It was as mentioned above that he as well gave
24 his constant energies to realizing the peace between
25 Japan and China. As to these diplomatic moves,

1 sometimes his opinion on procedure did not agree with
2 the Foreign Minister and others to bring about peace.
3 So far as I know, that he dared to try to realize what
4 he believed good for all the adverse circumstances was
5 because he was confident that it would serve the state
6 to materialize his primary intention which he had cher-
7 ished at the outset of forming the cabinet.

8 "5. On his speech in the 85th Session of the
9 Diet.

10 "When the cabinet was formed in these circum-
11 stances as given above, the 85th Session was at hand.
12 So Premier KOISO delivered a speech on the government
13 policy at the beginning of the Session to make his
14 opinion clear. The contents of his speech was nothing
15 but a concrete expression of his determination with
16 regard to forming the cabinet. Namely, in this speech,
17 he required the hundred million people to brace themselves
18 up in unison for the task ahead and he declared the
19 Indonesians' independence to be justifiable, because
20 every race is entitled to independence and to be able
21 to maintain a proper position among other nations and for
22 that reason he also proclaimed that the Korean and
23 Formosan people should quickly be vested with suffrage.

24 "6. As for the treatment of war prisoners, the
25 Supreme Command and the Ministers of War and Navy took

1 charge of these matters and the Prime Minister neither
2 had the authority over it nor assumed the responsibility
3 for it. Accordingly, the cabinet at no time dealt with
4 affairs relating to the treatment of war prisoners.
5 Besides, according to my memory, no one ever gave any
6 reports about prisoners of war matters at the cabinet
7 council."

8 You may cross-examine.

9 MR. SUTTON: The prosecution does not desire to
10 cross-examine this witness.

11 MR. BROOKS: May the witness be released on
12 the usual terms?

13 THE PRESIDENT: He is released accordingly.

14 (Whereupon, the witness was excused)

15 - - -

16 MR. BROOKS: We now offer in evidence defense
17 document 2213. This is the affidavit of Major General
18 F. S. G. Piggott, former military attache to the British
19 Embassy in Japan and is offered as evidence that KOISO
20 was opposed to war with Great Britain and the United
21 States and that he had a different opinion from that of
22 the Army.

23 THE PRESIDENT: Mr. Sutton.

24 MR. SUTTON: May it please the Tribunal, the
25 prosecution objects to this affidavit as containing

1 primarily the opinion of the affiant. The prosecution
2 particularly objects to the second sentence in the second
3 paragraph of this affidavit which purports to give the
4 belief of the witness as to why KOISO retired from the
5 Army on the ground that it is opinion evidence. The
6 prosecution also objects to the next to the last para-
7 graph of the affidavit as purely character evidence.

8 MR. BROOKS: If your Honor please, I will agree
9 to the deletion of the first objection. I think it is
10 the third paragraph, last sentence in the third paragraph
11 really. As to the last one, part of that should be
12 admitted. However, there is a statement there of fact
13 which I will not quote but the Court can see it in the
14 latter part of it that should be admissible and since
15 this is a court and not a jury I think they can over-
16 look them. The statement of the conclusion would have
17 no affect upon it.

18 THE PRESIDENT: We don't overlook them because
19 of the waste of time involved in having them repeated
20 ad nauseum. If we allowed those things to pass liberally
21 we would be sitting here half our time listening to a
22 lot of immaterial matter.

23 MR. BROOKS: I agree to the deletion, if your
24 Honor please, in the last paragraph from the word
25 "broadminded" in the first sentence of that paragraph

1 down to and including the word "and" in the third sentence
2 of that paragraph just before "a statesman not necessarily
3 reflecting." So it would start with "General KOISO
4 struck me as" and then would jump to "a statesman not
5 necessarily," and so forth.

6 THE PRESIDENT: The objection is sustained by a
7 majority and the balance is admitted on the usual terms.

8 CLERK OF THE COURT: Defense document 2213 will
9 receive exhibit No. 3391.

10 (Whereupon, the document above referred
11 to was marked defense exhibit No. 3391 and
12 received in evidence.)

13 MR. BROOKS: I now read defense document 2213,
14 exhibit 3391, omitting the excepted parts:

15 "I, F. S. G. Piggott, being first duly sworn,
16 depose and say.

17 "I was Military Attache to the British Embassy,
18 Tokyo, Japan, from 1921 to 1926 and from 1936 to 1939.

19 "I met General KOISO, Kuniaki in Tokyo in 1939.

20 "It was on account of a possibility that he
21 might be a 'dark horse' for the premiership that I
22 sought his acquaintance, with the concurrence of the
23 British Ambassador.
24

25 "I found General KOISO receptive to the idea of
improving Anglo-Japanese relations, which, he stated,

1 was important for his country. He stated that the
2 idea of solving disagreements between Japan and Great
3 Britain, and between Japan and the United States by war
4 was repugnant to him, and he said it was essential to
5 probe to the bottom and find a peaceful solution. He
6 said he would continue to study the outstanding problems
7 between our countries, and was certain the old friend-
8 ship could be restored to our mutual advantage.

9 "Our conversations were carried on in the
10 Japanese language."
11
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1 THE PRESIDENT: Mr. McManus.

2 MR. McMANUS: If the Tribunal please, in view
3 of the Tribunal's most recent ruling, this last deci-
4 sion in admitting this document, may I request the
5 Court to reconsider the defense document, the question-
6 naire, 573, submitted on behalf of the defendant ARAKI?

7 THE PRESIDENT: Mr. Sutton.

8 MR. SUTTON: May it please the Tribunal,
9 the prosecution respectfully objects to the interruption
10 of the proceedings at this point and strongly objects
11 to the motion made on behalf of defense counsel.

12 THE PRESIDENT: I haven't the faintest idea
13 what it is about. I do not recollect anything of
14 ARAKI's questionnaire. Anyhow, the application should
15 not be made now, at this stage. I should out of pure
16 courtesy be told about it by counsel in chambers. It
17 should be explained to me.

18 I fail to see how the upholding of any
19 objections by the prosecution can be held to admit
20 anything already rejected in the case of ARAKI. Had
21 the prosecution made further objections to this affi-
22 davit, they may well have been sustained.

23 MR. McMANUS: I shall make my application
24 later, if the Tribunal please.

25 MR. BROOKS: We now offer in evidence defense

1 document No. 2491. We do not desire to read this
2 document, but offer it for the Court's consideration
3 of the conditions in Japan as a result of air raid damage
4 to communications, transportation, etc., during the
5 period from July 1944 following the time that KOISO
6 was Premier, and we submit that a study of this docu-
7 ment and the official reports contained therein will
8 make clear to the Tribunal the conditions as to food
9 and receipt and transmittal of information that were
10 the problems with which KOISO had to deal at the time
11 he was appointed Prime Minister in the effort to
12 prevent the complete destruction of Japan.

13 The Court, after considering this evidence,
14 may well understand the reason for shortages of food,
15 clothing, etc., and understand also why the Premier
16 was principally occupied with alleviating conditions
17 in Japan where whole cities were being wiped off the
18 map by bomb raids destroying lives and property and
19 creating chaotic and emergency situations that called
20 for the undivided attention of the government and
21 destroyed contact with and interest in the affairs
22 of military forces at the front. It also shows why
23 KOISO's Cabinet has stated that its policy was one of
24 fighting a defensive war to avoid total destruction
25 while attempting to obtain a negotiated peace.

1 THE PRESIDENT: Mr. Sutton.

2 MR. SUTTON: May it please the Tribunal,
3 the prosecution first objects to the long and detailed
4 statement made by counsel in presenting this document.

5 THE PRESIDENT: You could save reading it if
6 it is admitted, of course.

7 MR. BROOKS: Your Honor, I submit there is
8 nothing that I could not have said on an opening state-
9 ment, and I did not intend to read it. That is why
10 I made the statement.

11 MR. SUTTON: The prosecution objects to
12 this document on the ground that it is immaterial and
13 irrelevant to any of the issues involved in this case.
14 Had the document been pertinent, it should have been
15 tendered in the general phase. The Tribunal has here-
16 tofore rejected evidence tending to prove the circum-
17 stances surrounding the use of the atomic bomb, record
18 page 17,655 to 17,662.

19 MR. BROOKS: The Court will notice this is
20 not confined to the atomic bomb alone, and it is
21 specifically covering the period of KOISO's holding
22 office as Premier from 1944. It does not cover the
23 years from 1928 to 1945, the end of the war.

24 THE PRESIDENT: By a majority, the objection
25 is upheld and the document rejected.

1 MR. BROOKS: I request that a letter dated
2 14 July 1947 to the President of this Tribunal on the
3 subject, Correction of Exhibit 158, record pages 1441
4 to 1443, be given exhibit No. 3384-A for identification
5 only; and I request that the matters referred to therein
6 be referred to the Language Arbitration Board for
7 corrections, if possible, in line with exhibit 3384.

8 CLERK OF THE COURT: The letter dated July 14,
9 1947, to the International Tribunal, will receive
10 exhibit No. 3384-A for identification only.

11 (Whereupon, the document above
12 referred to was marked defense exhibit
13 No. 3384-A for identification.)

14 THE PRESIDENT: Any application for the cor-
15 rection or revision of any document by the Language
16 Section will be granted.

17 MR. BROOKS: This concludes the presentation
18 of evidence on behalf of the defendant KOISO for the
19 time being, and counsel for the next accused in
20 alphabetical order will now proceed.

21 THE PRESIDENT: Mr. Chief of Counsel.

22 MR. KEENAN: Mr. President, the prosecution
23 inquires of the Court if a final decision has been
24 reached as to granting the request of the prosecution
25 that its witness, BULARIN, be permitted to take the

stand and affirm his affidavit under oath, as have other
1 witnesses. This request has been made and is emphasized
2 because one of the Allied nations has caused this wit-
3 ness to traverse a continent at considerable expense
4 and some effort in its attempt to comply with the orders
5 of this court. Especially in view of the fact that
6 this nation, the Soviet Union, has always promptly and
7 earnestly cooperated in this prosecution, and further
8 in view of the fact that the President has stated that
9 one or more Members of the Court has some inquiries
10 to make of this witness, the prosecution most earnestly
11 represents its belief that it would be most unfortunate
12 if this request could not be complied with. However,
13 Mr. President, we seek direction from this Court, and
14 represent that a careful examination, a very careful
15 examination, of the record discloses that that matter
16 has not finally been disposed of.
17

18 On the second point, Mr. President, of the
19 ultimate action of the Court on these affidavits where
20 witnesses have not appeared for one reason or another,
21 my colleague, Mr. Tavenner, is prepared to advert to
22 the record and give opposition fully, if this be the
23 appropriate time.
24

25 THE PRESIDENT: On the first point, Mr. Chief
of Counsel, a Member of the Tribunal has submitted to

1 the other Members a list of the questions that he would
2 like to ask of the Russian witness you named. He says
3 they are necessary to enable him to be clear as to
4 what the affidavit contains. I have not been notified
5 of any opposition by any Member of the Tribunal, so
6 the witness may be called.

7 MR. FURNESS: If the Court please, could we
8 have time to get the affidavit? We did not bring it
9 with us.
10

11 THE PRESIDENT: I think we should meet you
12 there. If you haven't brought the affidavit, we will
13 give you time to get it. In the meantime, we can be
14 going on with Mr. Tavenner's matter.
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MR. TAVENNER: If the Tribunal please --

THE PRESIDENT: Mr. Tavenner.

MR. TAVENNER: The Chief of Counsel has requested that I present the prosecution's views with regard to the affidavits of certain witnesses in the Russian phase whose presence for cross-examination has not been secured. At page 31,214 of the transcript the following announcement was made by the President of the Tribunal: "As to the other witnesses who are being detained in the Soviet Union the Court will consider the matter." It will be my purpose in this statement, prepared for simultaneous translation, to outline the situation that now exists with regard to these witnesses, state briefly how the situation is now changed from what it was when this matter was originally heard, call to the Tribunal's attention three points which were not considered at that time, and allude briefly to a connected matter, the recent request of defense counsel to reopen the general Soviet phase of the defense case.

During the case in chief for the prosecution the Russian prosecutor introduced in evidence thirteen affidavits of Japanese prisoners of war. At that time three of the affiants were brought to Japan

1 from Russia, two of whom were cross-examined, and
2 the third, KUSABA, committed suicide. The affidavit
3 of KUSABA was admitted. The affidavit of a fourth
4 witness, the deceased MIYAKE, was admitted, and the
5 affidavit of a fifth witness, NOHARA, shown to be in
6 Germany, was admitted.

7 On the 17th day of June last, page 24,517
8 of the transcript, the Tribunal ordered the prosecu-
9 tion to produce for cross-examination certain wit-
10 nesses within a period of two months or within such
11 longer period as may on cause shown be approved by
12 the Tribunal or, alternatively, to give convincing
13 reasons within the said period why they are not
14 able to produce the said witnesses. It was then
15 announced that the Tribunal will disregard the
16 affidavits of any one or more of the deponents in
17 respect of whom the prosecution fails to comply with
18 the order. On the showing of good and sufficient
19 cause the Tribunal extended the time for the produc-
20 tion of the witnesses.

21 The Russian prosecutor endeavored to the
22 best of his ability to meet the terms of the Tribunal
23 and has produced three additional Japanese prisoners
24 of war whose cross-examination has now been completed.
25 There remain for consideration five of the original

thirteen affidavits. At this point, if the Tribunal please, I desire to offer in evidence prosecution document 3229. It is a certificate by S. P. Kislenco, Acting Member of the USSR of the Allied Council for Japan, dated October 27, 1947, regarding one of the five deponents last mentioned. A copy of that has been served on the defense.

MR. BLAKENEY: Yes, I have seen the document, and I would like to make some objections to it on the grounds that, first, the document does not show the date of death of the deceased, but is merely dated on some day in October, certifying that he has died, time and place unspecified.

THE PRESIDENT: According to our copy, Major Blakeney, he died on the 7th of August, 1947, if I have been given the right copy. That has been added in ink.

MR. BLAKENEY: I see that addition for the first time. It was not on the copy served on the defense.

I wish to make objection further on the grounds that the prosecution is not engaged at this time in presenting evidence, but ostensibly in making a motion, and I think it improper to present evidence in support of a motion based, as the prosecutor said,

on the record.

1 THE PRESIDENT: The technical procedure
2 suggested by Major Blakeney, assuming it applies any-
3 where, has no merit except its technical merit.

4 Your objections are overruled and the docu-
5 ment admitted on the usual terms.

6 CLERK OF THE COURT: Prosecution document
7 3229 will receive exhibit No. 3392.

8 (Whereupon, the document above
9 referred to was marked prosecution exhibit
10 No. 3392 and received in evidence.)

11 MR. TAVENNER: It has just been pointed
12 out to me that the Russian text, which is the origi-
13 nal of this document, contains the date and the place
14 of death. In the copy that was circulated apparently
15 that date was left out.

16 It reads as follows:

17 "In accordance with the official data re-
18 ceived from competent Soviet authorities, KITA,
19 Seichi, former General of the Japanese Army, Japanese
20 POW in the USSR, born in 1886, died in Habarovsk of
21 seleron's hypertony and heart-valve insufficiency in
22 Hospital No. 08903 on August 7, 1947."

23 It is respectfully submitted that the
24 decision of the Tribunal in admitting the affidavit
25

1 of the deceased MIYAKE is applicable in this instance,
2 and based on that decision the affidavit of KITA
3 should be accepted as part of the evidence in this
4 case.

5 The remaining four affidavits are those made
6 by: USHIROKU, Jun, exhibit 703, appearing at page
7 7,515 of the transcript; TOMINAGA, Keoji, exhibit
8 705, page 7,527; OTSUBA, Kajima, exhibit 837, page
9 8,162; and YANAGITA, Genzo, exhibit 723, page 7,581.
10 All efforts of the prosecution to present these four
11 deponents for cross-examination have been exhausted.
12 It has been previously explained that they are con-
13 nected with other cases in the USSR and for security
14 reasons they cannot be produced. The prosecution
15 having done all within its power in this matter, the
16 Tribunal is now asked to make a final disposition of
17 the question.

18 Since the pronouncement of the Tribunal on
19 the 17th day of June last, the situation has materially
20 changed:

21 (1) On September 10, 1947, page 28,068 of
22 the transcript, precisely the same objection was
23 raised to the introduction in evidence by the defense
24 of the affidavit of H. G. W. Woodhead without making
25 him available for cross-examination. The Tribunal

1 admitted the affidavit. It is submitted no proper
2 and material distinction in principle can be made
3 with regard to the Woodhead affidavit and the affi-
4 davits in question. In other words, a contrary rule
5 has now been established by the Tribunal. It is sub-
6 mitted that if the question with regard to the four
7 Russian witnesses had arisen after the decision
8 regarding the defense affidavit of Woodhead, the
9 Tribunal would have applied the same rule and would
10 have admitted the Russian affidavits in the same
11 manner that they admitted the Woodhead affidavit.

12 (2) As previously stated, it has been
13 demonstrated that the prosecution has done all it
14 can to present these four deponents for cross-examina-
15 tion.

16 (3) One of the objections to the use of
17 the affidavits in evidence was based on a vituperative
18 attack by counsel against one of the partici-
19 pating nations, the substance of which was that
20 duress had been used in obtaining the affidavits.
21 The cross-examination of the witnesses just produced
22 has demonstrated the emptiness of such a charge and
23 the wholly unwarranted character of it.

24 (4) One of the chief items of evidence in
25 the first three of the said affidavits concerns the

1 Kan-toku-en. This was the subject of long, exten-
2 sive and exhaustive cross-examination of the three
3 Japanese witnesses produced by the Russian prosecutor
4 last week. By this cross-examination the defense has
5 had a fair opportunity to develop its theories, and
6 it is submitted further cross-examination on that
7 subject would be needlessly repetitive. As to the
8 other subjects dealt with in these affidavits, the
9 evidence is to a great extent cumulative, as pointed
10 out by my distinguished colleague, General Vasiliev,
11 when this matter was first heard.

12 I now desire to call the Tribunal's atten-
13 tion to three points which hitherto have not been
14 argued, and in connection with the first I will refer
15 to the recent defense request to reopen the general
16 Soviet phase of the defense case.
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(1) The first three of the four affidavits with which we are now concerned were adopted by the defense. Substantial portions of them were offered and read in evidence by defense counsel. In fact, more than half of the affidavit of USHIROKU was read in evidence by the defense, if the curriculum vitae evidence not be considered. In offering this evidence, counsel endeavored to place the Tribunal on terms, that is, to present it subject to the decision of the Tribunal on the defense motion to exclude it. No such terms were granted by the Tribunal, and without such leave being first obtained the proffer of the testimony, it is submitted, is free from any self-imposed terms of the offerer. As the defense objection was directed at the admissibility of the entire document, it is submitted, the subsequent adoption of a part of it is a waiver and abandonment of the original objection. The defense should not be permitted to accept the sweet and reject the bitter.

In this connection, defense counsel, page 31,842 of the transcript, announced that he must ask leave to reopen the general Soviet phase of the defense case as he wished to adduce other evidence in substitution for the parts of the prosecution affidavits which the defense offered in evidence.

1 This indeed would be an innovation. If the defense
2 be permitted to substitute new evidence, the prose-
3 cution under the circumstances should have the same
4 privilege. This would result in a retrial of the
5 Soviet phase of the case, for which, we submit, there
6 is no justification. The defense chose to introduce
7 in evidence testimony which it formerly sought to
8 exclude. It is bound by that choice, and in making
9 it the defense has abandoned or waived its original
10 objection.

11 In addition, it was stated by defense
12 counsel that reopening of the general Soviet phase
13 would be necessitated by the cross-examination of the
14 witnesses then being produced. In answer, we submit
15 that the defense had no right to assume that any
16 affidavit would be excluded by reason of non-production
17 of the deponent, and if the defense had testimony to
18 meet these affidavits which had been admitted and
19 failed to present it, it was of their own volition
20 and choice. In fact, the decision of June 17 was
21 long after the close of the Soviet phase. Nothing
22 has occurred to my knowledge in the course of cross-
23 examination which would make admissible now evidence
24 which was not admissible during the Russian phase or
25 relevant now that which was not relevant then.

(2) The prosecution contends that the lang-

uage of the Charter contemplates the admission of
1 these affidavits.

2 Article 13, Section A, provides that the
3 Tribunal shall admit any evidence which it deems to
4 have probative value. It would seem unnecessary to
5 argue that the sworn statements of these witnesses
6 have probative value, especially in light of the
7 showing made by the deponents as to whom the prose-
8 cution was successful in producing for cross-
9 examination.

10 Article 13-C, without limiting in any way
11 the scope of Subsection A, enumerates specific types
12 of evidence which may be admitted and under Sub-
13 section 3 thereof includes affidavits.

14 It is respectfully submitted that the
15 affidavits in question should be admitted under either
16 or both of these Charter provisions.

17 (3) The Nuernberg Tribunal construed a
18 similar Charter provision. While it is conceded that
19 this Tribunal is in no way bound by the ruling of that
20 body, it is respectfully suggested that its rulings
21 are entitled to great weight. In passing on the
22 affidavit of a witness who was not in Nuernberg at
23 the time of presentation, that Tribunal stated:
24

25 "I said that you are at liberty to put in
the document now if you wish to do so. That is one

1 thing. But if you do so you must attempt to secure
2 the attendance of the witness and should you fail to
3 do so, the Tribunal will attempt to secure the
4 attendance of the witness. But the document will
5 still be in evidence and will not be struck out, al-
6 though of course it will be open to the criticism
7 that it is only a deposition or an affidavit and
8 that the witness has not been produced for cross-
9 examination, and therefore the weight that attaches
10 to the testimony will not be so great as it would be
11 if the witness had been produced for cross-examination."

12 We respectfully submit that for all the
13 reasons assigned, the affidavit of KITA and the other
14 four deponents should be admitted and considered in
15 evidence. If that be the decision of the Tribunal,
16 there is no basis for the granting of defense request
17 to reopen the general Russian phase and such request,
18 it is respectfully submitted, should be denied.
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THE PRESIDENT: Major Blakeney.

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2 MR. BLAKENEY: This request of the
3 prosecution to reopen the decision of the Court,
4 arrived at after full and solemn consideration, is
5 somewhat astonishing to the defense, and, of course,
6 we wish the opportunity to reply fully to it. Equally,
7 of course, I am not prepared to do so now, not having
8 known what matter was coming up, and therefore I should
9 like to request that I be allowed some reasonable
10 time to prepare an answer to this motion, if the
11 Tribunal intends to entertain the motion at all
12 in spite of the repeated rulings of the past. In
13 that event, I should like to ask that I be permitted
14 to be heard, say, Monday morning, this being Thursday,
15 or at such other time as may be convenient to the
16 Tribunal.

17 THE PRESIDENT: What about tomorrow morning,
18 Major Blakeney?

19 MR. BLAKENEY: That, of course, means that
20 I and the translators will have to stay up all night
21 preparing the argument and having it ready for
22 simultaneous delivery.

23 THE PRESIDENT: It depends on the length of
24 the argument, of course.

25 MR. BLAKENEY: It will be at least as long

1 as the motion and perhaps longer, because of what I
2 consider to be the numerous misstatements of fact
3 which must be corrected by references to the record.

4 THE PRESIDENT: Do you make any exception
5 of KITA's case?

6 MR. BLAKENEY: Exception?

7 THE PRESIDENT: Yes. Are you objecting to
8 the production of his affidavit or to its being used,
9 seeing that he is dead according to the evidence
10 before us?

11 MR. BLAKENEY: Yes, of course, we do object
12 to the reception of that affidavit as well as others
13 in similar case, some of which the Tribunal ruled
14 would be accepted de bene esse.

15 THE PRESIDENT: Well, I think we are quite
16 prepared to give you to Monday morning to reply.

17 MR. BLAKENEY: Thank you.

18 THE PRESIDENT: The Tribunal would like to
19 know why it is not possible to have any witness, any
20 affiant, who is still alive produced here in Tokyo.
21 I know security reasons have been stated, but we need
22 some amplification of that.

23 I know how absolute in our own courts such a
24 pronouncement would be by, say, a foreign secretary
25 or a person of that standing, but here in this Court

1 perhaps we may be given a little more information, if
2 the philosophy underlying a foreign secretary's
3 pronouncement in relation to the tribunals of his
4 own country has no application here. The courts of
5 a nation are not allowed to get out of line with its
6 foreign policy; that is the philosophy. But here we
7 are not bound by the policy of any particular nation,
8 but we must respect its real security measures.

9 We will hear you after the recess, General.
10 We will recess for fifteen minutes.

11 (Whereupon, at 1045, a recess was
12 taken until 1105, after which the proceed-
13 ings were resumed as follows:)

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1 MARSHAL OF THE COURT: The International Military Tribunal for the Far East is now resumed.

2 THE PRESIDENT: With the Tribunal's permission,
3 the accused MUTO will be absent from the courtroom for
4 the balance of the morning session, conferring with his
5 counsel.

6 General Vasiliev.

7 GENERAL VASILIEV: The impossibility to produce
8 other witnesses, Japanese prisoners of war who are at
9 present in the USSR, is explained by the fact that they
10 are connected with other war crimes trials committed
11 against the USSR.
12

13 THE PRESIDENT: Which is the more important,
14 or the most important trial of all?

15 GENERAL VASILIEV: Your question is not clear
16 to me, your Honor.

17 THE PRESIDENT: This, I should say, is the
18 greatest war crimes trial now in existence.

19 GENERAL VASILIEV: I fully agree with that
20 statement, sir, but the participation of these people
21 is quite different in this trial and in the trials that
22 are going on in the USSR. In the trials that are going
23 on in the USSR we cannot do without these people at all.
24 These cases are being investigated at present, or
25 haven't yet been investigated by the courts. The

1 efficiency in the investigation and examination of
2 these cases is a matter of state security.

3 The proper document from the Ministry of
4 Foreign Affairs of the USSR I will be able to produce
5 in a few days. I believe it will be a telegram certi-
6 fied by the Member from the USSR of the Allied Council
7 for Japan. I don't think I will be able to produce any
8 other document in so short a time.

9 THE PRESIDENT: Yes. Have you said all you
10 propose to say, General?

11 GENERAL VASILIEV: Yes, sir.

12 May I call the witness Budarin?

13 THE PRESIDENT: Call him.

14 GENERAL VASILIEV: May the witness Budarin
15 be called?
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1 B O R I S A L E X A N D R O V I C H B U D A R I N,
2 called as a witness on behalf of the prosecution,
3 being first duly sworn, testified through Soviet
4 interpreters as follows:

5 THE PRESIDENT: I have a number of questions.
6 Produce his affidavit first.

7 GENERAL VASILIEV: May the witness take a look
8 at his affidavit, according to the adopted procedure,
9 and confirm it?

10 (Whereupon, a document was handed
11 to the witness.)

12 DIRECT EXAMINATION

13 BY GENERAL VASILIEV:

14 Q State your surname, first name, and father's
15 name.

16 A Budarin, Boris Alexandrovich.

17 Q What post did you hold when the vessel Perekop
18 perished?

19 GENERAL VASILIEV: May the witness be shown
20 document No. 822?

21 (Whereupon, a document was handed
22 to the witness.)

23 Q Is this your affidavit?

24 A I answer your first question: I was first
25 mate of the ship Perekop.

1 B O R I S A L E X A N D R O V I C H B U D A R I N,
2 called as a witness on behalf of the prosecution,
3 being first duly sworn, testified through Soviet
4 interpreters as follows:

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8 at his affidavit, according to the adopted procedure,
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15 name.

16 A Budarin, Boris Alexandrovich.

17 Q What post did you hold when the vessel Perekop
18 perished?

19 GENERAL VASILIEV: May the witness be shown
20 document No. 822?

21 (Whereupon, a document was handed
22 to the witness.)

23 Q Is this your affidavit?

24 A I answer your first question: I was first
25 mate of the ship Perekop.

1 The second question was to look through my
2 affidavit, wasn't it? Yes, this is my affidavit, written
3 by me.

4 Q Are the contents thereof true and correct?

5 A Yes, true and correct.

6 GENERAL VASILIEV: I ask the permission of the
7 Court to read the first four and one-half pages of the
8 affidavit, as only a few sentences from that affidavit
9 were read previously, pages 8049 and 8050 of the
10 transcript.

11 THE PRESIDENT: A majority of the Court will
12 not permit that, General. They have agreed merely to
13 certain questions being put, through me, by a Member of
14 the Tribunal. I am about to put them.

15 BY THE PRESIDENT:

16 Q The first question is, where were the
17 identification signs located on the vessel Perekop?
18

19 A May I answer?

20 The identification signs were in the following
21 places: First of all, on both boards of the ship.

22 Q What did those signs signify?

23 A These flags had the state flag of the USSR with
24 hammer and sickle in the left-hand upper corner.

25 Q What was their size?

A About the size of the flags, I can say as

1 follows: First of all I would like to say that the
2 flags were on the holds and on the boards of the ship,
3 and their size was as follows: two meters twenty centi-
4 meters long and one meter twenty-five centimeters wide.
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1 Q When were they made?

2 A All the identification signs on the ship
3 were made at the time of the outbreak of the war
4 between Germany and the USSR.

5 Q At what distance could those signs be dis-
6 tinguished in conditions of normal visibility, with
7 or without instruments?

8 A Those identification signs -- the distance
9 at which those identification signs could be dis-
10 tinguished depended on the quality of the instru-
11 ments; but if no instruments were used they could
12 be distinguished with the naked eye at the distance of
13 200, 250 meters in conditions of good visibility.

14 Q What do you mean when you say that you had
15 hung out identification flags?

16 A When a ship wants to show its nationality,
17 in addition to those identification signs which it has
18 on boards and on holds of the ship, we hung out
19 nationality colors consisting of four flags with the
20 letters "USSR" on them.

21 Q Did you see any other vessels on the day of
22 the alleged attack?
23

24 A No, I saw no other vessels on the day of
25 the attack, but I saw some vessels prior to that day.

Q Are you familiar with the systems of air-

planes?

1 A Yes, I know the system of planes so far
2 that I could distinguish bomber from destroyer --
3 from a fighter, and I know that bombers drop bombs.

4 Q Were the attacking planes biplanes or mono-
5 planes, seaplanes or land planes?

6 A The first plane which flew over us was a bi-
7 plane. All other planes which bombed the vessel --
8 all of them were monoplanes.

9 Q Were there any seaplanes?

10 A I can't tell exactly whether those planes
11 were land planes or seaplanes, because at the time
12 of bombing I had no possibility to observe them care-
13 fully.

14 Q What were the identification signs on the
15 attacking planes, that is to say, their form, color,
16 and size?

17 A The identification signs that were on the
18 planes that bombed the vessel were red circles on the
19 planes and fuselage of the aircraft, and their size
20 was about three-quarters of a meter.

21 Q Approximately at what distance from your ship
22 did the enemy aircraft fly?

23 A The flight at which the planes flew was dif-
24 ferent: sometimes 100 meters, sometimes 200 meters,
25

1 sometimes 100 meters, sometimes 50 meters, and some-
2 times even less.

3 Q How did you know at the moment of the
4 attack on December 17 there were no hostilities be-
5 tween the USSR and Japan?

6 A I remember that on that day we received
7 a radio broadcast called the "Pacific Ocean Seamen,"
8 which is broadcast specially for the seamen, and
9 from that broadcast we learned that there was no
10 war between the USSR and Japan.

11 Q Why were two hours needed for the big group
12 of planes to sink the unarmed ship?

13 A Will you kindly repeat the question, please?

14 Q Why were two hours needed for the big group
15 of planes to sink the unarmed ship?

16 A When the bombing planes were bombing the
17 vessel, I had no opportunity of observing time. I
18 believe it was two o'clock -- I believe it was two
19 hours or probably less than that that the planes came
20 and went and dropped bombs on the vessel.

21 Q On what do you base your statement that one
22 of the planes photographed the ship while it was sink-
23 ing?

24 A It is my personal opinion. I observed the
25 plane did not bomb the vessel. Neither did it machine-

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1 gun it. It was flying at a very low height, and so I
2 supposed that the plane was -- that they were photo-
3 graphing the vessel at the moment when it was sink-
4 ing and to see how the sailors were being drowned.

5 Q What was the weather at the moment of the
6 attack?

7 A There were no clouds; the visibility was
8 very good.

9 Q What was the ship's cargo?

10 A We had no cargo.

11 Q What was the ship's tonnage?

12 A About 5,000 tons.

13 Q How did you make yourself understood by the
14 Japanese when you were wandering?

15 A We used the English language to make our-
16 selves understood to the Japanese.

17 Q On what do you base your statement at the
18 end of your affidavit that the Japanese were acting
19 according to the instructions of the Japanese Govern-
20 ment?

21 A That is my personal opinion. If there was
22 one plane bombing our vessel I don't think I would have
23 thought that but there was a big group of planes -- but
24 when I saw that there was a big group of planes, then
25 the possibility of making a mistake was excluded and

1 that is why I came to the conclusion which I gave in
2 my affidavit.

3 RUSSIAN MONITOR: The possibility that they
4 made a mistake was excluded.

5 Q How many members of the crew perished?

6 A Eight men.

7 THE PRESIDENT: I have no further questions
8 on behalf of the Tribunal or any Member of it.

9 GENERAL VASILIEV: May the witness be
10 released on the usual terms?

11 THE PRESIDENT: He is released accordingly.

12 (Whereupon, the witness was excused.)
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1 THE PRESIDENT: Mr. Mattice.

2 MR. MATTICE: May we proceed now with the
3 next case?

4 On behalf of the accused MATSUI, I desire to
5 read now a statement of what we expect to prove.

6 When the defendant MATSUI was a student of
7 the Army Preparatory School, he was deeply impressed
8 with the idea advocated by KAWAKAMI, Soroku, the
9 great senior of the Japanese Army, that the "raison
10 d'etre" of the --

11 THE PRESIDENT: Mr. Mattice, the copies have
12 not yet been handed to the Judges.

13 MR. MATTICE: Very well.

14 THE PRESIDENT: You may proceed now.

15 MR. MATTICE: When the defendant MATSUI was
16 a student of the Army Preparatory School, he was
17 deeply impressed with the idea advocated by KAWAKAMI,
18 Soroku, the great senior of the Japanese Army, that
19 the "raison d'etre" of the Japanese Army is to secure
20 the peace of the Orient. Later on, he came to sympa-
21 thize with the idea of the "principle of Greater
22 Asia" propounded by Sun Wen, "Father of the State of
23 China," that Asiatic peoples must not submit them-
24 selves to the "rule of might," (Hado), and strive
25 against each other but go hand in hand with friendly

1 understanding, according to the "rule of justice,"
2 (odo), which is the time honored moral sense of the
3 Orient. Thus he was putting his heart and soul into
4 the establishment of cordial relations between Japan
5 and China, and the resuscitation and prosperity of
6 Asia. Thus he has been endeavoring to this day for
7 the realization of that idea. He has never been a
8 cabinet member, nor has he ever taken any important
9 post in general politics and military politics.

10 Accordingly, he has, of course, never
11 planned or prepared any aggressive war or carried it
12 into practice as the prosecution alleges. He has
13 never taken part in any plan to commit nor committed
14 any action contrary to international law, treaties,
15 agreements or guarantees. He will testify, for con-
16 venience sake, according to the groups mentioned in
17 the Indictment.

18
19 The defendant MATSUI is charged with offenses
20 in 20 Counts. In Crimes Against Peace under Group
21 One of the Indictment he will deal with in three
22 parts.

23 I. With regard to Counts 1 to 17, inclusive,
24 there is absolutely no fact at all of his having
25 planned and prepared a plan for an aggressive war
because the post the defendant occupied did not

1 enable him to decide or participate in a decision of
2 such an act nor had he any authority to commit such
3 an act.

4 The prosecution has tried to make the witness
5 Chin Te-chung testify that the movement of the Greater
6 Asia doctrine advocated by MATSUI is the same in its
7 principle with the Greater Asia doctrine advocated by
8 Sun Wen.

9 This is the principle of brotherhood of the
10 East and the West; the principle of the co-existence
11 in the world. It never meant an Oriental Monroe
12 Doctrine or a "bloc principle." The idea of this
13 doctrine does not necessarily intend to exclude any
14 European or American people from various areas in
15 Asia. On the contrary, it recognizes with respect
16 the painstaking work of civilization achieved by the
17 European and American peoples in Asia during the past
18 century. Therefore, Europeans or Americans, who
19 understand the civilization peculiar to Asia and de-
20 sire to cooperate with us for the sake of the Asiatic
21 races and their welfare, are our friends and col-
22 leagues. He will testify hereby that the movement
23 conducted by him was but to elaborate on the views
24 manifested in this doctrine of Greater Asia. Accord-
25 ingly, he will make this clear beyond doubt by wit-

1 nesses and exhibits that this doctrine was not ad-
2 vocated in order to plan and prepare for an aggressive
3 war.

4 Furthermore, it will be shown that the Chi-
5 nese Greater Asiatic Association which was created
6 in China was not organized by such a process as men-
7 tioned in the testimony given by the witness Chin.
8 Again, the fact that the positions the defendant occu-
9 pied were such that they did not allow him to partici-
10 pate in planning or preparing such a conspiracy as
11 mentioned in the Counts will be proven by witnesses.
12 The prosecution tried to prove that the defendant had
13 deliberated at Berlin concerning the affairs of the
14 Soviet Union.

15 On this point, although contrary evidence
16 has already been produced by the witness HASHIMOTO,
17 Kingoro, it is also intended that the substance of
18 that meeting be proven clearly by testimony to be
19 produced by the defendant himself. Moreover, the
20 fact will be made clear by witness that at that time
21 he was relieved of the post of the Chief of the Sec-
22 ond Section of the General Staff.

23 II. Concerning the matter of initiating
24 aggressive war charged in Counts 19, 25, and 26, the
25 defendant MATSUI was not in a position or authorized

1 to make any decision, nor to be consulted with, as
2 a reserve officer or as a Cabinet Councillor, during
3 the period of time mentioned in the Counts.

4 III. He is charged with the offense of wag-
5 ing war of aggression according to Counts 27-32 and
6 No. 34-36.

7 The defendant was called out of the reserve
8 on August 14, 1937 and held the post of commander of
9 either the Shanghai Expeditionary Force or the
10 Central China Area Army until February of the follow-
11 ing year, 1938. It was only a sequence of the Japan-
12 ese system that he was called out by order from the
13 reserve and took the post of a commander. Besides,
14 he was still ever desirous of a speedy termination
15 of hostilities and endeavoured to seize every oppor-
16 tunity for peace between Japan and China. This fact
17 will be testified to by witnesses.

18 Apart from the period aforementioned, the
19 defendant was simply an officer in the reserve list
20 enjoying civilian life. He had nothing to do with the
21 matters mentioned in the Counts.

22 In the second group of the Indictment --
23 Murder -- the defendant MATSUI is accused on the bases
24 of the facts set forth in Counts No. 44, 45, 46, 47,
25 51 and 52.

MATSUI was the Commander-in-Chief of the Shanghai Expeditionary Army or the Central China Area Army from August, 1937 to February, 1938. During that period MATSUI had never taken part in any common plan to murder POW's, enemy nationals and their people, nor did he give order or permission to the Japanese Army, as described in the Indictment. On the contrary, as the commander, MATSUI did his best to maintain and enforce military and moral discipline. He took every precaution to prevent violations and punished severely anybody who acted without regard to discipline. Furthermore, he stressed harmony and friendship between Japan and China which was his long-cherished idea; tried to minimize as much as possible damages caused by the hostilities, and gave orders to be decent to and protect the good people. The witnesses and evidences will verify his action. At the same time, that he also made every effort to protect the foreign interests and cultural establishments will also be proved. As for the protection of the so-called refugee district, any attack on this district was prohibited even before the capture of Nanking, not to mention the fact that after the capture the district was guarded by the Kempei unit and the Japanese officers and men were strictly prohibited

1 from entering the area. These facts will be clearly
2 established. All our evidence will prove that no
3 atrocities were carried out with the understanding
4 and consent of MATSUI, as referred in the statement of
5 Prosecutor Hsiang. Our witnesses, who were actually
6 on the job of guarding Nanking, will clarify the
7 condition of guarding and the activities of the Japan-
8 ese Army and the fact that there were, besides the
9 casualties caused by fighting, no acts of atrocity
10 as claimed by the prosecution.

11 MATSUI was ill in bed at Soochow when Nan-
12 king fell on 13 December, 1937. He entered Nanking
13 on 17 of the same month, withdrawing from there on
14 21 of the same month, and returning to the headquart-
15 ers in Shanghai. Thus, he stayed in Nanking only
16 for five days. Furthermore, the authority of the
17 Commander-in-Chief of the Central China Area Army
18 was to make plans of unified command regarding the
19 operation, having actually no units under his direct
20 command. The actual movements of the soldiers were
21 controlled by the low-ranking commanders. All these
22 facts were already testified by witness NAKAYAMA in
23 the general phase.

24 That at the time of attacks on the cities of
25 Kwantung and Hankow and in the regions of Khalkin-Gol

1 and Lake Khassan, MATSUI was already retired, was a
2 civilian and was not in a position to carry out these
3 attacks.

4 In the third group -- Convention War Crimes
5 and Crimes Against Humanity -- the defendant MATSUI
6 is accused in every Count. But, we maintain that in
7 regard to the treatment of POW's and civilians, the
8 defendant MATSUI was never in a position with author-
9 ity to handle POW's. He never authorized, permitted
10 or gave order to violate the laws and customs of
11 war, much less proposed to the Japanese Government
12 the suspension of preventing such violations.

13 Our witnesses will testify that, without
14 authority to do anything with the treatment of POW's,
15 as mentioned above, MATSUI asked the authorized units
16 under his command to care for and protect POW's and
17 civilians during the period from August, 1937 to
18 February, 1938, that is, when he was the Commander-
19 in-Chief of the Shanghai Expeditionary Army and the
20 Central China Area Army, and that this request of his
21 was carried out.

22 In other periods, he was neither in a posi-
23 tion able to make such request nor was he ever con-
24 sulted or informed of their treatment.
25

In short, we will show that the defendant was

1 never in such a position as to be able to plan, pre-
2 pare and carry out an aggressive war throughout the
3 whole period covered in the Indictment; that he
4 never acted for such purposes; that there exists no
5 fact that he committed crimes of opening and carrying
6 out an aggressive war; and that he was not involved
7 in any murders, war crimes, or crimes against human-
8 ity.

1 Now, if the Tribunal please, due to the
2 indisposition of the accused MATSUI, we desire to
3 alter our order of proof somewhat and therefore will
4 pass the first three documents listed, numbers 2, 3
5 and 4; and at this point we will call the witness
6 OSUGI.

7 - - -

8 H I R O S H I O S U G I, called as a witness on
9 behalf of the defense, being first duly sworn,
10 testified through Japanese interpreters as follows:

11 DIRECT EXAMINATION

12 BY MR. MATTICE:

13 Q Will you state your name and address to the
14 Tribunal, please?

15 A My name is OSUGI, Hiroshi; my address, No. 5
16 2-chome, Funatsuki-machi, Kita-ku, Nagoya-shi.

17 MR. MATTICE: May the witness be shown
18 defense document 2238, please?

19 Q Will you look at the document which has been
20 handed you and tell this Tribunal whether that is your
21 affidavit?
22

23 A Yes, this is my affidavit.

24 Q Are the matters and things stated therein true?

25 A They are all true.

MR. MATTICE: I offer this document in evidence,

1 if the Tribunal please.

2 THE PRESIDENT: Admitted on the usual terms.

3 CLERK OF THE COURT: Defense document 2238
4 will receive exhibit No. 3393.

5 (Whereupon, the document above
6 referred to was marked defense exhibit
7 No. 3393 and received in evidence.)

8 MR. MATTICE: I will now read exhibit 3393
9 omitting the caption.

10 THE PRESIDENT: You can start at paragraph 2
11 of the affidavit.

12 MR. MATTICE: Yes, I intended to start at
13 that point. (Reading):

14 "2. From August 1937 throughout the year
15 1938, as leader of an observation section of the
16 first battalion, the third artillery regiment, the
17 third division, I took part in the campaigns in
18 Shanghai and Nanking areas. I was then artillery
19 2nd lieutenant.

20
21 "3. On the 9th of November 1937, when we
22 were attacking Nanshi, Shanghai, I was specially
23 ordered by the battalion commander to scout the
24 boundaries of the Settlement area so that these zones
25 might be absolutely safe from the range of our fire.
I had the results of our scouting sent to every company

1 on the spot. As far as I know, we caused no damage to
2 the settlement area during our attack on Nanshi.

3 "4. After the Nanshi campaign, my unit
4 assembled for readjustment at Taitsang and started
5 for Nanking on about the 2d of December. There were
6 hardly any fighting on the way to Nanking and never
7 saw a totally destroyed village between Taitsang and
8 Nanking. We did see a few houses partially destroyed
9 or burnt but I never saw nor heard of any houses that
10 were destroyed by the Japanese soldiers. During our
11 march, there were enough houses for us to quarter at,
12 so we did not have to camp out.

13 "5. I have forgotten the name but at a
14 village on our way to Nanking I saw a pile of rice
15 burnt and abandoned. Upon inquiry I was explained by
16 the villagers that it had been burnt by some retreat-
17 ing Chinese soldiers who did not want it to be taken
18 away by the Japanese army. After this, I observed the
19 destroyed houses on the way more carefully and found
20 that most of them were storehouses and other provision
21 depots.

22 "6. On about the 11th of December 1937, I
23 was ordered to scout for the line of advance and suit-
24 able places for position for our army. I left my unit
25 at Chiyun and went alone to the south side of Nanking.

1 I think it was on the evening of the 13th that I
2 entered within the walls of Nanking through the south
3 gate of the town. There were many scattered dead
4 bodies of both Japanese and Chinese. Among them I
5 saw the body of a Japanese soldier, tied to a tree
6 with several bullets in his body. I knew at a glance
7 that he had been captured and slaughtered by the
8 Chinese soldiers. I cut the rope and let the body
9 down on the ground. Around the city walls there were
10 many dead bodies of Chinese soldiers but not those of
11 civilians. I went within the walls only about a kilo-
12 metre from the city gate but I saw Kempei guards
13 already posted at the banks and government offices
14 with signs of off limits to Japanese soldiers. At the
15 same time I noticed a very few residences damaged in
16 the town. It was the first time for me to see the
17 city of Nanking, but I could see that as a whole it
18 preserved its old condition.

19 I saw no traces of fire there.

20 "7. Toward the end of the battle of Shanghai,
21 we repeatedly received instructions from the higher
22 command regarding the following matters which I enforced
23 among my men:

24 "Observe strictly military and moral disci-
25 pline.

"Treat the Chinese people kindly.

"Observe International Laws.

"Do not cause international complications.

"Be prudent in behavior keeping in mind that we are under observation by the powers.

"8. On the 13th of November, I joined my unit at Tangshuichen and led them to Tushanchen to the south of Nanking. At this time, at the instructions of the higher command, I strictly forbade my soldiers to go out on passes. Even going out on official business, the soldiers were ordered not to enter the southwest quarters of the city of Nanking as they were set aside as refugee's quarters. At that time, I heard from my colleagues that this prohibition was due to the danger of the armed defeated enemy soldiers in civilian clothes who had sought refuge in these quarters. As I had had some dangerous experiences from the Chinese plain-clothes soldiers in the battle of Shanghai, I had my men take special caution never to approach any place where defeated Chinese soldiers were likely to be in hiding. My unit eventually marched westward without entering the city walls. While I was in the vicinity of Nanking, I had never heard of such stories as unlawful act and massacres of Chinese people frequently said to be committed by

the Japanese soldiers.

1 "9. At the beginning of 1938, my unit was
2 stationed near Chinking. One day I visited a famous
3 temple near by with my battalion commander. In a
4 hall on the second floor of the temple building there
5 was a great collection of books, all of which had been
6 sealed by the Kempei with notes to the effect that
7 taking out any of these books was strictly forbidden.
8 Offenders, including the Japanese soldiers, will be
9 duly punished.

11 "10. About that time, when a soldier of an
12 adjacent company was arrested by the Kempei, I accom-
13 panied the commander of the company to take over the
14 arrested soldier. The detachment commander of the
15 Kempei, however, told us that the soldier had committed
16 rape and refused to hand him over because of the order
17 of Commander in Chief MATSUI to maintain strict military
18 discipline and to severely punish any offenders.

19 "11. Our greatest trouble throughout our
20 operations was the Chinese plain-clothes soldiers, who,
21 when pressed hard, hid their weapons and pretended to
22 be civilians but the moment our eyes were off, they
23 came challenging us. As it was utterly impossible to
24 tell them from real civilians, when they were without
25 arms, we, at last, resorted occasionally to such a

1 method as gathering all the village people in one
2 place and keeping surveillance over them, as occasion
3 demanded. And as soon as the plain-clothes soldiers
4 surrendered themselves or to our authority, public
5 order was regained. We set the common people free and
6 turned the surrendered soldiers over to our Kempei."

7 Signed and sworn to.

8 BRIGADIER NOLAN: There will be no cross-
9 examination.

10 MR. MATTICE: May the witness be excused on
11 the usual terms?

12 THE PRESIDENT: He is excused accordingly.

13 (Whereupon, the witness was excused.)

14 THE PRESIDENT: We will adjourn until half-
15 past one.

16 (Whereupon, at 1200, a recess was taken.)
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AFTERNOON SESSION

The Tribunal met, pursuant to recess, at 1330.

MARSHAL OF THE COURT: The International
Military Tribunal for the Far East is now resumed.

MR. MATTICE: We next call the witness OUCHI.

THE PRESIDENT: Yesterday some witnesses were
called and were not cross-examined. In such cases it
would save time to rely on the affidavit unless there
is some good reason.

MR. MATTICE: This witness is of that character
as I understand.

THE PRESIDENT: We want to avoid swearing any
witnesses who are not going to be cross-examined.

BRIGADIER NOLAN: May it please the Tribunal,
I have informed my learned friend of the names of the
witnesses that I don't intend to cross-examine.

THE PRESIDENT: Thank you. Is this witness one?

MR. MATTICE: This is one.

THE PRESIDENT: No need to swear him.

MR. MATTICE: We offer in evidence then, if the
Tribunal please, defense document 2668 which is the
affidavit of OUCHI, Yoshihide.

THE PRESIDENT: Admitted on the usual terms.

CLERK OF THE COURT: Defense document 2668 will

1 receive exhibit No. 3394.

2 (Whereupon, the document above referred
3 to was marked defense exhibit No. 3394 and
4 received in evidence.)

5 MR. MATTICE: I will now read exhibit 3394,
6 omitting the caption and starting with the paragraph
7 numbered 2:

8 "Since our landing at Woosung at the end of
9 September, 1937, I had taken part in the battles between
10 Shanghai and Nanking Areas as the Acting Commander of
11 the 7th Battery of the 9th Mountain Artillery Regiment
12 of the 9th Division in the Expeditionary Force to
13 Shanghai. At that time, my rank was 2nd Lieutenant of
14 Artillery.

15 "Our regiment assembled in the vicinity of an
16 air-field west of Shanghai after crossing over the
17 Soochow River about the 3rd November of the same year.

18 "That area was rather devastated owing to
19 cannonade and bombing. Our regiment was then still in
20 battle position and the military discipline was main-
21 tained with great strictness and severity.

22 "At that rendezvous, we were given the follow-
23 ing instruction by the Chief of Staff: 'As your regi-
24 ment will be sent presently to the zone where various
25 foreign rights and interests exist, each commander ought

1 to have his men strictly at his command and to endeavour
2 for the maintenance of the military discipline.'

3 "I then gave my men a caution in order that
4 the above instruction might be thoroughly understood by
5 them and there was no one under my command who violated
6 the discipline at the rendezvous and its vicinity.

7 "There were several women remaining in a
8 village (the name of it was forgotten) over against the
9 rendezvous, so the stepping into the area was strictly
10 forbidden.

11 "Thereupon, one night, red and green signal
12 shells were shot up from within the village and then
13 the shower of enemy's shells were poured down on the
14 quarters of our unit.

15 "So we searched all through the village on the
16 following morning, but we could not find even a single
17 man. Accordingly, we thought it necessary henceforth
18 to take strict precautions even against a woman.

19 "About 14th November in the same year, our
20 unit advanced as a first-line troop by the order to
21 advance to Soochow and we scarcely met enemy resistance
22 till we got there. Some villages along the road to
23 Soochow were for the most part reduced to ashes, few
24 houses had the roof left and there were no inhabitants
25 to be seen in these villages.

1 "As our unit advanced at the head, we never
2 could have done such violence and I know such destruction
3 had been done by the Chinese troops as they began to
4 retreat.

5 "I strictly prohibited incineration of houses
6 and looting both for the Chinese people and for the
7 Japanese troops coming after and perhaps owing to that
8 order, there were much satisfactory results without
9 any accident brought about.

10 "We entered Soochow with no resistance of the
11 enemy, so the streets were not destructed at all except
12 a slight damage by air-bombing.

13 "In this town also the removal of goods by
14 individual soldiers was prohibited and the preparation
15 for requisition was being conducted by intendants officers
16 but as our unit was ordered to advance westwards about
17 17th of November, the said requisition was not executed,
18 and all the soldiers were marching even with their
19 rationed food cooked in their mess-tins.

20
21 "We encountered a fierce resistance of the enemy
22 in the mountainous zone around 30 kilometres east of
23 Nanking and the said zone was so well prepared and
24 defended by the Chinese troops who had been specially
25 trained against the Japanese army as the hypothetical
enemy, that their resistance to us was never so fiercely

made.

"Our unit was advancing again at the head and all the Japanese troops were obliged to bivouac, as the houses to be used for their quarters in this vicinity had been all burnt down by Chinese troops.

"Then we received an oral order as follows:

"The aim and object for advance of our troops is the wall of Nanking and as regards the entry into the city, you shall have another order."

"We marched into the air defence school outside of the Kwanghuamen at dawn on the 9th of December after successive desperate fighting and we found that lots of houses had been destructed and devastated to obstruct our advance. Especially those houses in the vicinity of the air field were burnt down by incendiarism.

"Above stated destruction was surely made by the Chinese troops, as there was no Japanese troops that marched ahead of us.

"On the night of 9th of December there was transmitted to us the order stating that if the enemy would not surrender at noon the following day (10 December), we should attack on the City of Nanking and at the same time we were given the following restriction and caution.

"1. As the City of Nanking is the capital of

1 the Republic of China you should take care not to send
2 your shells so far as to fall within the city though
3 it is allowed to bombard the enemy on the wall.

4 "2. Take particular care not to drop your
5 shells upon the foreign rights and interests and the
6 refugee quarters in the city. (I had the map of the
7 City of Nanking then but I have not it now with me and
8 there are none remaining in the First Demobilization
9 Bureau as they were destroyed by fire.)

10 "At the above mentioned order I racked my
11 brain from the technical point of view of firing but
12 fortunately I could attain the purpose as it was
13 mentioned in the order.

14 "Our attack on Nanking was launched at about
15 2 o'clock on 10 December and we captured the wall of
16 the Kwanghuamen but it was not permitted to enter the
17 city and only the military police as well as some small
18 units entered there.

19 "On that day, near the wall was a burnt body
20 of a man of unknown nationality; it was still breathing
21 faintly.

22 "On seeing this, Major HAGA, our Battalion
23 Commander was enraged and gave us a strict order to
24 find out the offender, so I also stopped the preparation
25 for fighting, assembled my men, gave a warning and

1 investigated the criminal, but there was no offender
2 among the men under my command.

3 "The surgeon who inspected the corpse decided
4 that it seemed to have been committed at least ten hours
5 before -- prior to our entry into the city, and that a
6 Japanese soldier must have been captured by the Chinese
7 troops, who had burnt him to death.

8 "Our unit turned back to Tangsuichen during
9 that night.

10 "We entered into the City of Nanking on 15th
11 of December and lodged several days at the Chinese
12 Barracks where each unit mounted guard and all the
13 soldiers were prohibited to go out; so none of them
14 went out of the barracks except officers on official
15 duty. And it was so with all the units in our division.
16 Consequently, there was not a single criminal, who was
17 charged of an illegal action.

18 "An officer, a friend of mine, told me that
19 there seemed to have been many refugees in the refugee
20 quarters, but it was guarded by the military police; so
21 even an officer, not to speak of a private, was not
22 permitted to enter there.

23 "I saw a great deal of Chinese army equipments
24 were thrown away in disorder on the streets when I went
25 there on official duty, but I did not find out any fire

1 disaster except some ruins of small fires and the street
2 were almost safe from destruction.

3 "I saw a few corpses of Chinese soldiers at the
4 area along the Yangtze River, but never found a corpse
5 which was massacred.

6 "We turned back eastward on around 20th of
7 December."

8 Signed on the 29th day of September by the
9 deponent, OUCHI, Yoshihide.

10 The next offer defense document 2627 which is
11 the affidavit of WAKIZAKA, Jiro, with this deletion:
12 that the sentence beginning with the words "A friend
13 of mine told me" at the bottom of page 1 and to the
14 end of that paragraph, and the paragraph at the bottom
15 of page 4. So that the document with the exception
16 of those two paragraphs is offered in evidence. There
17 will be no cross-examination on this as I understand it.

18 THE PRESIDENT: The second part of paragraph 6,
19 is that what you mean? "The number of the buried" down
20 to "preceding battles".

21 MR. MATTICE: Second part of paragraph 6.

22 THE PRESIDENT: Admitted on the usual terms.

23 CLERK OF THE COURT: Defense document 2627
24 will receive exhibit No. 3395.

25 (Whereupon, the document above

referred to was marked defense exhibit

No. 3395 and received in evidence.)

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1 MR. MATTICE: I will now read exhibit 3395,
2 omitting the caption and beginning with paragraph
3 No. 2.

4 "In September 1937 I was serving as com-
5 mander of the 36th Regiment, 9th Division. At that
6 time I was colonel. Orders for the mobilization of
7 my regiment was issued on around September 20, 1937,
8 and I took part in the engagements in Shanghai and
9 Nanking areas under command of the Expeditionary
10 Force to Shanghai.

11 "The commander of the Expeditionary Force to
12 Shanghai was General MATSUI.

13 "3. Upon my arriving at Shanghai, instruc-
14 tions of the general were often passed to me through
15 my senior. The general on every possible occasion
16 delivered instructions saying that military discipline
17 should be strictly maintained, innocent people be
18 pacified and protected, and foreign interests be safe-
19 guarded. Then I made efforts to make his instructions
20 thoroughly understood by my officers and men, and
21 gave them warning so that such misdeeds as incendiary,
22 murder, looting and **rape** may not occur among them.

24 "While the Japanese force was advancing toward
25 Nanking from Shanghai, my units always took the lead,
and noticed that not a few houses of villages along

our route had been burnt down, destroyed, or looted. The Chinese natives told us that this was due to the incendiary and destruction caused by the so-called Field-Clearing-Tactics customarily taken by the Chinese forces when they were about to retreat, in order to check the advancement of the Japanese forces. They also told us that, on the other hand, both Chinese soldiers and people looted these houses, as was usually the case with them in a war time. We endeavored to preserve houses and other facilities for the purpose of pacifying and protecting the Chinese populace, and also for the convenience of our following units, far from undertaking to burn up and destroy them. This was a commonsense of the Japanese force though higher authorities also instructed so.

"As soon as my units captured Shunwachen, some 40 kilometers southeast of Nanking at about 4 p.m. on December 8th, my units immediately began to press hard on the enemy, hurriedly marched all night, and at dawn on the 9th reached Shanctfanctchen, south of the Kwancthuamen. It was pitch dark that night. Before we could ascertain in which direction Nanking was located, suddenly two pillars of big flames rose high up in the north, as if they were to scorch the sky. And I guessed they rose up in the direction of

1 Nanking and made them a target of our advancement.
2 My guessing turned out right. Later, for a few days
3 before we captured Nanking we could see, day and
4 night, flames rise up within the walls. At that time
5 the bombing of the Japanese planes were not so intense
6 and, on the other hand, there was no bombardment of
7 our artillery corps. Therefore, we concluded that
8 either the Chinese Field-Clearing-Tactics or acci-
9 dental fires, as occurred in a state of confusion,
10 were presumably responsible for these flames. Hither-
11 to the Japanese forces were strictly warned against
12 accidental fires. Soon after the capture of Nanking
13 my units were engaged in extinguishing the first of
14 the burning houses. There happened no cases of in-
15 cendiary on the part of the Japanese Army, and my
16 units never caused an accidental fire.

18 "My units captured Kwancthuamen in the early
19 morning of December 13th. A furious fighting went on
20 at this gate and, consequently, a large number of the
21 killed and the wounded were reported on both sides.
22 Immediately after the capture my units took care of
23 the killed and the wounded. Gathering up the corpses
24 of both Japanese and Chinese forces to the same
25 place, located half way between the Kwancthuamen
and the Tuncettsimen, my units erected a grave-post

and enshrined these sacrifices there. A sutra
chanting was served for them by our military monk, and
heavenly bliss was prayed by them over a day and
night during which these remains were being buried.

"When I made a tour of inspection within
the walls of Nanking on December 15th, I wanted to
see the real state of things in the refugees' sec-
tion. The gendarmes, by whom the section was strictly
guarded, however, refused my request, saying that
without a special permission, even a commander was
prohibited from entering there. Then I was unable
to inspect the inside of that section. On that
occasion, and also later, I never heard of any illegal
behaviors caused by the Japanese force inside the
section.

"A certain house was examined with a view
to accommodating the headquarters of our regiment.
When a certain lieutenant, bearer of the regimental
colors, entered that house in order to examine an
air raid shelter attached to it, he was fired on by
revolvers from inside. He reported to me that he then
immediately accepted the challenge with his pistol,
with a result of shooting two Chinese soldiers to
death. I at once instructed officers and men under
my command to take precaution against the remnants of

1 the Chinese forces, and not to drop in any Chinese
2 private houses.

3 "Immediately after my units entered Nanking,
4 a certain paymaster lieutenant found a Chinese ladies'
5 shoe left off on the way while he was out to dis-
6 charge an official business. He brought that shoe
7 back to his quarters in order to show its wonderful
8 fashion to his comrades. A gendarme, however, found
9 out this fact and submitted a document to the court-
10 martial on suspicion of plunderage. The lieutenant,
11 shedding tears in my presence, asserted his innocence,
12 and as I admitted him to be innocent, I reported to
13 my superior official to that effect.

14 "I remember that this case was finally found
15 to be a minor offense not liable to prosecution. The
16 supervision of the Japanese gendarmes in Nanking was
17 extremely strict, and no consideration was shown even
18 to any minor offenses.

19 "General MATSUI, immediately after a memorial
20 service for the dead was held on December 18th, ad-
21 monished us, senior officers, that military dis-
22 cipline should be more strictly maintained, and the
23 prestige of our Imperial Army be raised and efforts
24 be made to realize friendly relations between Japan
25 and China without delay.

1 "After the fierce battles to capture Nanking,
2 I was deeply struck with this righteous and benevolent
3 mind of General MATSUI, and, in later operations and
4 defenses I always endeavored to exalt this spirit more
5 and more. And after my return home I dedicated a
6 statuette of 'Kannon' (T.N. the Goddess of Mercy)
7 to the" -- I am unable to read the name of the temple --
8 "located in Fukui Prefecture, in order to pray for
9 the repose of the soul of both Japanese and Chinese
10 killed in battles and for the peace of the Orient.

11 "I was in Nanking until the morning of Decem-
12 ber 24th. No criminal was found among those under my
13 command. The natives became very familiar with the
14 Japanese soldiers; some worked as cooks, and no one
15 entertained fear toward the Japanese soldiers. And
16 I never heard any shot inside or outside the walls
17 after the fall of Nanking. If a machine gun was fired,
18 its report ought to be heard, but I never heard such
19 sort of sound.

21 "After the hostilities in Nanking was over,
22 my units undertook the responsibility of defense of
23 Kiating. When one night a guard of the battalion
24 headquarters under my command poured oil into a lamp,
25 an oil can caught fire owing to his mistake, and
there happened a fire by which the quarters burned

1 down. On the charge of this accidental fire I was
2 subjected to a reprimand in accordance with the Army
3 Disciplinary Law. The battalion commander was put
4 on a good behavior, and the guard commander and that
5 guard was heavily imprisoned. By order of Commander
6 MATSUI military discipline was maintained in such a
7 manner, and even a bit of unlawful act was never over-
8 looked.

9 "Besides the above I do not remember any un-
10 lawful act which occurred among my units.

11 "On this 12th day of September 1947" -- and
12 signed by the deponent, WAKIZAKA, Jiro.

13 I next offer in evidence, if the Tribunal
14 please, defense document 2714. I am informed there
15 will be no cross-examination, and we will, therefore,
16 not call the witness.

17 THE PRESIDENT: Admitted on the usual terms.

18 CLERK OF THE COURT: Defense document 2714 will
19 receive exhibit No. 3396.

20 (Whereupon, the document above re-
21 ferred to was marked defense exhibit No. 3396
22 and received in evidence.)

23 MR. MATTICE: I will now read exhibit 3396,
24 omitting the caption and beginning with the paragraph
25 numbered 2.

1 "About the middle of September 1937 I joined
2 the Shanghai Expeditionary Army, took the field as
3 Battalion Commander of the 1st Battalion of the 19th
4 Infantry Regiment, and participated in the siege
5 of Nanking. At the time I held the rank of a major.

6 "Towards the end of September 1937 we landed
7 near Woosung, Shanghai, and participated in the
8 battle.

9 "In the middle of November we were ordered
10 to pursue the enemy in the direction of Soochow with
11 strict instructions from superior not to destroy or
12 burn houses unless absolutely unavoidable for opera-
13 tional reasons. I instructed my subordinates of this
14 and looked over them.

15 "Aside from the railway station and its vicin-
16 ity being destroyed by bombings, Soochow was left
17 intact. One of the natives there told me that the
18 city was kept from destruction because the inhabitants
19 of the city pleaded to the Chinese Army with money
20 to retreat from the city without fighting in the city
21 or destroying and plundering it.

22 "At a place 1 li (TN: 2.5 miles) east of Wushin
23 and inside its city limits, the resistance of the Chi-
24 nese forces caused a battle to break out which caused
25 some damages to the houses nearby. Upon my inspection

1 after the battle I found some of the contents of the
2 provision warehouse had been carried off. I there-
3 upon posted guards at once to guard the warehouses
4 and prohibited the further removal of the contents by
5 any unauthorized individual. After having reported
6 the situation to the Intendance Department of the
7 division, we turned the place over into their hands.
8 This sort of step had been ordered by superiors long
9 before, and we acted accordingly, not only at Wushin
10 but everywhere.

11 "6. A fierce battle was fought at a place
12 which lies between the Mopan mountain range and Nan-
13 king. Almost all the houses there had been burned
14 down before the occupation by the Japanese forces and
15 the marks of plunder were strikingly evident. Nothing
16 was left there to be utilized by the Japanese forces.
17 We camped in tents, or even without them, and made
18 the advance with no other provisions than our field
19 rations.
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1 "7. In our drive against Nanking the movement
2 of the army was strictly controlled and no arbitrary
3 action was allowed even to capitalize on opportune
4 operationed chances. But more detailed instructions
5 were given by about December 8 ~~highest~~ authorities regard-
6 ing the attack upon Nanking. According to the schedule
7 our unit was to begin the attack on Yuhuatai about
8 December 10, turn to Kwanhwamen on the afternoon of
9 the 12th and proceed into the attack from about the
10 13th. But upon receiving the news of the fall of Nan-
11 king, we only engaged in a clean-up campaign near the
12 gate and then turned back to Tangsuchen on the same
13 night. We entered Nanking on the 15th, deployed and
14 were billeted in houses in the southeast part of Nan-
15 king. Almost all the houses in the city were left
16 undestroyed. There were some small fires around the
17 billeting area, but none were started by my unit. As
18 the higher authorities had warned us against fire
19 incessantly before and after our entry into Nanking,
20 my officers and men were especially careful. Upon entry
21 into Nanking, I prohibited my men to go out into the
22 city except on official errands and I instructed them
23 to respect and protect foreign properties and their
24 rights and not to inflict any harm on the Chinese folks
25 but to endear them when they went on those official

1 errands. I placed a caretaker of fire at every billet
2 to whom I gave stern warnings and notices concerning
3 fire prevention. This step was taken at every front
4 every time we billeted.

5 "8. After my unit's entry into Nanking, we were
6 billeted in such a way as to be able to start movement
7 of pursuing the enemy at any time in accordance with
8 the instructions given to us from higher up. Our
9 actions were as follows during our stay at Nanking:

10 "December 13, entered Nanking through the
11 Kwanghuamen gate, mopped up the remnants of the enemy
12 east of the creek that runs from south to north on the
13 west side of the Tunktsinmen gate; pushed on to
14 Tangshuichen that night.

15 "December 14, mopped up around Tangshuichen
16 and returned to Nanking about 7 p.m. the 15th.
17 December 16, the ceremony of reading the Imperial
18 Rescript was held. As all the officers and men were
19 suffering from lice, we cleaned up their personal
20 effects with boiling water. On the 17th the triumphant
21 entry of the Commanding General, MATSUI, into Nanking
22 took place. Worked on moving our camping quarters.
23 On the 18th the army's memorial services for the dead
24 were held. Moving of camping quarters continued. On
25 the 19th regimental memorial services were held on the

1 20th, guard escort for the commanding general of the
2 army on the occasion of his inspection of the battle-
3 field and hospitals; on the 21st and 22d cleaned up
4 the battlefield of Yuhuatai and searched for missing
5 persons; on the 23d prepared for our departure. On
6 the 24th we moved to Kunshan. In addition to the
7 above-said daily routines, various reports of battles,
8 communicating to the bereaved families, paying of
9 allowances, soldier saving deposits, communicating
10 the families and receiving and distributing mails and
11 packages among the soldiers from the homeland of
12 several months, etc., all of which took so much time
13 that we could not even have a rest.

14 "9. When we were billeted at Nanking, going
15 in and out of the billets was very closely guarded.
16 I got instructions to train the sentinels in the way
17 of questioning the people, so that they might not
18 cause trouble to the law-abiding natives on account
19 of language difficulties. I obeyed to the letter. No
20 superior ordered to plunder or render violence, much
21 less the Commanding General of the Army MATSUI. On
22 the contrary, we were directed on December 19 by
23 General MATSUI and on the 22d by our regimental com-
24 mander to be kind and good towards Chinese folks so
25 that they would place a trust in the Japanese Army.

1 "10. About December 19 I went inspecting along
2 the road which runs from Chungshanru to Hsiakwan on
3 horseback and found no damage was done to the houses
4 there. Before our entry into Nanking rumors were
5 current of the awful destruction of Nanking caused by
6 the Japanese Army's bombings, but actually witnessing
7 it, I was able to confirm that it was untrue. I found
8 no corpses of Chinese soldiers at Hsiakwan either. On
9 December 24 my unit turned back to the east, reached
10 Kunshan about January 5, and was ordered to stay there
11 for garrison duty.

12 "11. During the time of our garrison at
13 Kunshan, a body of American pastors and medical men
14 came over to inspect churches and hospitals there on
15 the introduction of Lieutenant Colonel OKA of the
16 Special Service Division at Shanghai. They were
17 pleased and expressed gratitude to find those institu-
18 tions had suffered only small damages and were in good
19 order and entrusted them to my custody. After having
20 a luncheon together we took a souvenir picture and
21 parted. For about a month after that I also did gar-
22 rison duty at Soochow. There the houses were standing
23 side by side as they ever were. The streets were
24 well arranged and trade was flourishing. No illegal
25 conduct of the Japanese Forces were witnessed there

1 and we were in harmonious terms with the native inhabi-
2 tants. Recreation facilities were so well provided
3 for the Japanese Army and not one irregularity occurred.

4 "On this 8th day of October, 1947."

5 Signed by the Deponent, NISHIJIMA, Takeshi.

6 I next offer in evidence, if the Tribunal
7 please, defense document 2715, and in connection with
8 it we will also offer, because they relate to the same
9 matter, defense document 2764.

10 THE PRESIDENT: Admitted on the usual terms.

11 CLERK OF THE COURT: Defense document 2715
12 will receive exhibit No. 3397. ~~Defense~~ document 2764
13 will receive exhibit No. 3397-A.

14 (Whereupon, document 2715 was marked
15 defense exhibit No. 3397 and received in evi-
16 dence. Document 2764 was marked defense
17 exhibit No. 3397-A and received in evidence.)

18 MR. NATTICE: Reading first exhibit 3397,
19 which is titled, "Instructions":
20

21 "I was deeply moved by the gracious words that
22 His Majesty was pleased to grant me again at this
23 time when the Central China Expeditionary Forces car-
24 ried at one charge the walled city of Nanking, capital
25 of China, by dint of the fierce pursuit following the
battle of Hutung, and thus have accomplished this

1 historically splendid undertaking. It was thanks to
2 the very hard fighting and exertions on the part of
3 the soldiers who participated in the fighting that
4 such a humble one as I am could discharge his duty
5 and meet His Majesty's expectations. Therefore, I can-
6 not but express my deep gratitude for the efforts that
7 have been made.

8 "It should be borne in mind, however, that
9 our goal is a long way off, and the responsibility
10 assumed by the army is all the more heavy, so that you
11 should not relax in your efforts in the least. Hence
12 all of you should strive to render all the more ser-
13 vice to the state. All officers and men should realize
14 the true significance of command, should enforce
15 stricter military discipline, should concentrate their
16 energy on education and training based on experience,
17 and should strive for the perfection of the fighting
18 strength of the army, thereby making the preparations
19 for the next military operation complete and wanting
20 nothing. At the same time, you should be on stricter
21 guard against possible enemy attack, should keep mili-
22 tary secrets as best you can, and should maintain
23 public peace and order, thus affording no opportunity
24 for recalcitrants to arise. On the other hand, with
25 the long-range view of the future prosperity of the

1 Orient and in accordance with the traditions of Japan,
2 you should be merciful to the Chinese masses groaning
3 under misgovernment, and should cooperate in pacifying
4 them through guidance and enlightenment. The principle
5 of the Imperial Army, of course, remains the same
6 irrespective of whether fighting is carried on or not.
7 Every one of you should be cautious with regard to
8 conduct on your part and should exert your utmost
9 efforts to maintain and augment our splendid battle
10 results, thereby enhancing the prestige of the Imperial
11 Army.
12

13 "The above are my instructions.

14 "On December 18, 1937, MATSUI, Iwane, Com-
15 mander of the Central China Expeditionary Forces."

16 Exhibit 3398 is the certificate which is
17 attached to that, and I will not read that unless the
18 Tribunal wishes it.

19 THE PRESIDENT: 3397-A.

20 MR. MATTICE: We now offer defense document
21 2667.

22 May we call the witness, NAKASAWA, Mitsuo.
23
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25

1 M I T S U O N A K A S A W A, called as a witness
2 on behalf of the defense, being first duly sworn,
3 testified through Japanese interpreters as follows:

4 DIRECT EXAMINATION

5 BY MR. MATTICE:

6 Q You may give your name and address to the
7 Tribunal, please.

8 A My name is NAKASAWA, Mitsuo; my address,
9 Sakai-Mura, Higashi Yatsushiro Gori, Yamanashi Pre-
10 fecture.

11 MR. MATTICE: May the witness be shown defense
12 document 2667, please?

13 Q Is that your affidavit, Mr. NAKASAWA?

14 A Yes.

15 Q You have signed it, have you not?

16 A Yes.

17 Q Are the matters and things stated in that
18 affidavit true?

19 A Yes, they are true.

20 MR. MATTICE: I offer it in evidence, if
21 your Honor please.

22 THE PRESIDENT: Brigadier Nolan.

23 BRIGADIER NOLAN: May it please the Tribunal,
24 may I make objection, please, in paragraph 7, page 4,
25 at line 8, to the sentence beginning with the words,

1 "Judging from the circumstances . . ."

2 THE PRESIDENT: I cannot find it, Brigadier.

3 BRIGADIER NOLAN: And in line 13 of the
4 same paragraph, to the sentence beginning --

5 THE PRESIDENT: That is the third line, not
6 the eighth.

7 BRIGADIER NOLAN: I mean line 3 of paragraph
8 7, commencing with the words, "Judging from the cir-
9 cumstances . . ."

10 THE PRESIDENT: You object to the whole of
11 the balance of the paragraph?

12 BRIGADIER NOLAN: Just to that sentence there.

13 THE PRESIDENT: Yes.

14 BRIGADIER NOLAN: And to the sentence in
15 line 13, in the same paragraph, commencing with the
16 words, "Consequently, it was also quite obvious . . ."
17 That is line 8 of paragraph 7.

18 Our objection is based on the grounds that
19 these are conclusions drawn by the deponent and so is
20 usurping the function of the Tribunal.

21 MR. MATTICE: I think the objection is well
22 taken, if the Tribunal please, and the two sentences
23 of that paragraph may go out.

24 THE PRESIDENT: The document is admitted, with
25 the exception of those two sentences, on the usual

terms.

1 BRIGADIER NOLAN: May I ask, Mr. President,
2 if you please, that the first sentence of the second
3 paragraph of section 4 on page 3 -- first and second,
4 the first and second paragraphs, be referred to the
5 translation board, as there seems to be some doubt
6 about the accuracy of the translation.
7

8 THE PRESIDENT: They are referred accordingly.

9 CLERK OF THE COURT: Defense document 2667
10 will receive exhibit No. 3398.

11 (Whereupon, the document above
12 referred to was marked defense exhibit
13 No. 3398 and received in evidence.)

14 MR. HATTICE: I will read exhibit 3398,
15 omitting the caption, starting with the paragraph
16 numbered "1."

17 "1. I am a former lieutenant-general, and
18 from November 1937 to the end of January 1938 partici-
19 pated in the siege of Nanking as Chief of Staff of
20 the 16th Division under the command of the Shanghai
21 Expeditionary Force.

22 "2. While the 16th Division was carrying out
23 a pursuit attack towards Chuyung in December 1937,
24 orders were received to attack Nanking on or about
25 December 3rd, and started its advance but on or about

1 the 8th of the same month was ordered to stop further
2 advance at a point three or four kilometers from Nan-
3 king. Furthermore, we were ordered that, as Nanking
4 was the capital of China and there were many foreign
5 interests, cultural and historical remains, and
6 cultural institutions, not to destroy them, and, that
7 at the time of triumphal entry into the city, to
8 send a select unit in order to placate and treat the
9 citizens kindly and to maintain order. I had this
10 point made known thoroughly with the respective units.

11 "3. What troubled us most during the attack
12 on Nanking were the battle fought in the vicinity of
13 Tsuchinshan where the 33rd Regiment faced the enemy
14 and that fought in the vicinity of Chungshan-ling,
15 the divisions main front. The division paid no small
16 price to capture Nanking without damaging Tsuchinshan
17 and the Hsiaoling of the Ming Dynasty which were
18 specified in the orders. The Chinese units occupying
19 the vicinity of Chungshan-ling were not only the
20 greatest obstruction to the divisions front, but also
21 by firing at the rear and flank of the 33rd Regiment,
22 which was attacking Tsuchinshan, they harassed the
23 regiment to no end. Still, our Army had to stand
24 the disadvantage of refraining from using artillery
25 pieces, not to mention of the use of heavy infantry

1 weapons. These facts hindered our advance generally
2 and we were forced to suffer a great loss needlessly.
3 However, because of our sacrifice, Chushan-ling and
4 Hsiaoling of the Ming Dynasty were kept intact, and
5 the regiment, which finally occupied Tsuchinshan in
6 spite of the difficulties, was given a letter of
7 appreciation from the army commander after the cam-
8 paign.

9 "4. The 16th Division, which had reached the
10 walls of Nanking at Chungshan-men at the dawn of
11 December 13, 1937, sent in about two battalions into
12 the city and had them sweep the area previously in-
13 dicated, that is, the area embracing Raipingshan,
14 Shanyuan-men, Hsiakwan and Chungshan Road.

15 "The sweeping was continued on the next day
16 also. On the fifteenth of December the 16th Division
17 headquarters and a small unit entered the city, but
18 no inhabitants had evacuated from the area under the
19 charge of the division. On December 23rd dispositions
20 of troops were changed. A part of the 16th Division
21 was given new disposition of guarding the inside and
22 outside of the city, substituting another unit which
23 entered the city previously, and remained in Nanking
24 until about January 20th of the following year.
25

"5. The refugees' area became, after the

1 change in disposition of December 23rd, included in
2 the garrison district of the 16th Division. The area
3 was marked out clearly at the time of entry and was
4 guarded strictly simultaneously with the entry and
5 even officers were not permitted to go in or out of
6 this area unless they had special permission. After
7 the Central China Area Army and the Commander of the
8 Shanghai Expeditionary Army entered the city, instruc-
9 tions were often issued to maintain strict military
10 and moral discipline and I passed these orders to
11 every unit.

12 "6. At the time of the occupation of Nan-
13 king all the responsible administrative personnel had
14 already fled from the city. There wasn't a single
15 administrative personnel remaining, and consequently
16 the Japanese troops could find no person with whom they
17 could negotiate in regard to maintaining peace and
18 order. Indeed, the situation was such that our troops
19 had no other alternative but to take over into their
20 hands the maintenance of order. It was extremely in-
21 convenient for both the Japanese troops and the Chinese
22 inhabitants.

23
24 "7. After entering the city we found on the
25 highway from the Chungshan-men of the city limits of
Nanking to Hsiakwan a great deal of discarded uniforms,

1 sabers, ammunition, rifles, and caps. And yet when we
2 made our sweep inside of the city limits of Nanking,
3 there were no Chinese to be seen with the exception of
4 the refugee area. Therefore, being unable to trust
5 that all the inhabitants in the refugees' area were
6 peaceable citizens, the necessity of investigating
7 the inhabitants of the area came about.

8 "8. Thus, a Sino-Japanese Joint Commission
9 was organized on Dec. 25th to investigate the inhabi-
10 tants.

11 "The method of investigation was to interro-
12 gate or inspect the Chinese one by one in the presence
13 of both Japanese and Chinese and judge whether he was
14 a straggler or not by consultation of the Japanese
15 soldiers and the Chinese committees; for the general
16 people, certificates of residence were issued. Those
17 who were determined to be stragglers by these means
18 were turned over to the Headquarters of the Shanghai
19 Expeditionary Force. Accordingly, it is indeed not
20 true that they were slaughtered.

21 "9. As almost all the villages outside of
22 Nanking were set on fire by Chinese troops putting the
23 so-called 'scorch earth' operation into practice as
24 they retreated so that the Japanese troops didn't even
25 have any houses to billet and almost all the units were

1 forced to camp out. Common as such 'scorch earth'
2 operations of the Chinese troops were, the burning
3 of homes were especially numerous in the area of
4 this battle.

5 "Even inside of the Nanking fortress there
6 were traces of fire here and there when we first
7 entered. There were said to be fires started by the
8 Chinese troops as they retreated. Because of the
9 necessity of maintaining billeting facilities in
10 cold weather, the Headquarters ordered every unit to
11 be on the alert against fire at all times, and a
12 responsible man was picked to control fire in each
13 unit. But in spite of these precautions, there were
14 times when we caught Chinese girls with certificates
15 of residence starting fires.

16 "10. I did receive reports from the military
17 police of a few instances of plunder committed by
18 Japanese soldiers. However, as the residents fled
19 their belongings were carried with them and most of
20 their houses were practically empty. I never did hear
21 of any organized or mass plundering. Needless to say,
22 it is absolutely without fact that the Headquarters
23 ordered, connived, or permitted such illegal acts.
24 I was informed directly by Chinese victims that most
25 of the plundering and destruction in the battlefields

NAKASAWA

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1 of China were the common acts of retreating Chinese
2 troops and those desperate people who took chances to
3 force themselves in the area.
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1 "11. The protection of foreign interests
2 and cultural institutions was strictly ordered by
3 General MATSUI and was made known down to the last
4 unit under his command. The Chinese, however, were
5 skillful in hiding behind foreign interests. They
6 used to especially abuse the use of foreign flags
7 and there were cases in which straggler Chinese
8 soldiers were found hiding under a foreign flag. I
9 got such reports many times from the Chinese even
10 within the Nanking fortress. Consequently, it is
11 true that the Japanese troops could not at once
12 identify the existence of foreign flags as being
13 synonymous of foreign interests with confidence,
14 and sometimes they could not help raiding places
15 that impressed them as being dangerous. It is
16 regrettable that these raids gave rise to all kinds
17 of complications.

18 "12. There is no such fact that organized
19 rapes were committed by Japanese soldiers. There
20 were a few scattered offenses concerning discipline
21 as I recall, but I know they were all punished in
22 accordance with the laws.

23 "13. The places where buried bodies were
24 said to have been found according to the evidence
25 presented by the prosecution are those places where

1 the Chinese troops had built positions and defended
2 themselves as in the case of the area between
3 'Chungshan Men' and 'Ma-Gun' or places where there
4 were facilities for the receiving of the dead and
5 wounded from their positions as in the case of
6 Taiping-Men Fukueishan and the vicinity. It is a
7 fact that many of the soldiers of both sides were
8 killed in these areas. But never was there any
9 mass butchery committed at these places.

10 "14. When the 16th Division came to guard
11 Nanking and its vicinity its efforts were concentrated
12 on maintaining peace and order. As the result order
13 was restored in the city, the confused people were
14 straightened out and they were gradually returning to
15 their homes with confidence in the Japanese troops.
16 General MATSUI's order to treat the inhabitants kindly
17 was so thoroughgoing that as early as the end of the
18 year the Assembly of the Maintenance of Public Order
19 was organized and at the inaugural ceremony held
20 on January 1, 1938, thousands upon thousands of
21 Chinese gathered at the public square in front of
22 Kulou, the place of ceremony, and cheered. Subsequently,
23 the number of residents was increasing and even peddlers
24 were seen more and more. It is absolutely not true
25 that illegal and violent acts of the Japanese troops

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1 were frightening the inhabitants at that time.

2 "23rd of September, 1947."

3 Signed by the witness.

4 You may cross-examine.

5 THE PRESIDENT: Brigadier Nolan.

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CROSS-EXAMINATION

1 BY BRIGADIER NOLAN:

2 Q General NAKASAWA, you were Chief of Staff
3 of the 16th Division?

4 A Yes.

5 Q What army was that division in?

6 A At the end of November, it came under the
7 command of the Shanghai Expeditionary Forces.

8 THE INTERPRETER: Not "November"; "October."
9

10 Q And, under whose command was it at the time
11 of the capture of Nanking?

12 A Under General MATSUI.

13 Q But, it was a component part of one of
14 General MATSUI's armies. What army?

15 A It belonged to the Shanghai Expeditionary
16 Forces under General MATSUI.

17 Q And, did it belong to the Shanghai
18 Expeditionary Forces under General MATSUI at the time
19 of the capture of Nanking?

20 A At the time of the fall of Nanking, the
21 Shanghai Expeditionary Forces was under the command
22 of Prince ASAKA, and this Expeditionary Force was
23 in turn under the command of General MATSUI.

24 Q And, was the 6th Division, of which you
25 were Chief of Staff, part of the Shanghai

1 Expeditionary Force, or was it part of the 10th Army?

2 A It was part of the Shanghai Expeditionary
3 Force.

4 Q All right. Where was the headquarters of
5 the Shanghai Expeditionary Force at the time of the
6 fall of Nanking?

7 A It was somewhere to the east of Nanking.
8 I have forgotten the name of the place.

9 Q And, after the fall of the city, where
10 was the headquarters?

11 A At the time of the fall of Nanking, the
12 headquarters were at Tansuichen and after that with-
13 in the City of Nanking.

14 Q When was the headquarters set up in the City
15 of Nanking?

16 A I recall that it was about the 15th of
17 December. This is the divisional headquarters.

18 Q Was the headquarters of the Shanghai
19 Expeditionary Force in the City of Nanking after the
20 fall of the city?

21 A I recall that it was not located within
22 Nanking immediately after the fall of Nanking.

23 Q When was it located in Nanking?

24 A The headquarters entered the city at the
25 same time as the formal entry into the City of

1 Nanking on the 17th of December, but I do not recall
2 accurately just when the headquarters itself was
3 formally established, whether it took over from a
4 preceding unit or just what actually happened.

5 THE INTERPRETER: "I do not recall whether
6 the headquarters was actually established in Nanking
7 immediately after the fall of Nanking or just exactly
8 what the date of the formal establishment of the
9 headquarters was."

10 Q Did the 10th Army take part in the attack
11 upon Nanking?

12 A Yes, I believe it did.

13 Q Was it part of the Shanghai Expeditionary
14 Force?

15 A I do not think that the 10th Army was a
16 part of the Shanghai Expeditionary Forces.

17 Q Where was the headquarters, after the fall
18 of the city, of the 10th Army?

19 A I do not know. I had no connection with the
20 10th Army. Therefore, I do not know.

21 Q Do you know what divisions were in the 10th
22 Army?

23 A I do not know for sure, but I believe that
24 the 6th Division and the 114th Division formed the
25 10th Army, but, as I have said before, since I was

1 not attached or had any connection with the 10th Army,
2 I do not know for sure.

3 Q Was the 8th Division part of the 10th Army?

4 A I do not know pertaining -- matters pertain-
5 ing to the 10th Army.

6 Q Now, tell me the numbers of the divisions
7 in the Shanghai Expeditionary Force at the time of
8 the capture of Nanking.

9 A The 16th Division, the 9th Division, part
10 of the 13th Division. As for the others, I do not
11 know where they were located.

12 Q Were the 3rd and 11th Divisions part of the
13 Shanghai Expeditionary Force at that time?

14 A I believe they were a part of it.

15 Q Now, in your affidavit, in paragraph 2, you
16 tell us that at the time of the triumphant entry
17 into the city a select unit was sent in. That was
18 on the 17th of December, wasn't it?

19 A Those which were dispatched into Nanking
20 immediately after the entry into Nanking occurred on
21 the 13th and 14th of December.

22 Q In your affidavit you say that at the time
23 of the triumphal entry into the city a select unit
24 was sent in, and that was on the 17th of December,
25 wasn't it?

1 A The units arrived at the walls of Nanking
2 on the morning of the 13th, and on that day and on
3 the following day, two battalions were sent into the
4 city for mopping-up operations.

5 Q Was a select unit sent into the city at the
6 time of the triumphal entry into the city on the 17th
7 of December?

8 A No, that is not so. At the time of the entry
9 into Nanking -- the ceremony of the entry into Nanking
10 on the 17th of December, the units were not limited
11 to those alone.

12 THE PRESIDENT: We will recess for fifteen
13 minutes.

14 (Whereupon, at 1445, a recess was
15 taken until 1500, after which the proceed-
16 ings were resumed as follows:)
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1 sent in "in order to placate and treat the citizen
2 kindly and to maintain order."

3 Had there been reports of outrages or atrocities
4 ties which caused the dispatch of this special unit
5 into the city?

6 A The two battalions were sent into the city
7 to mop up remnants -- enemy remnants.

8 Q You say in your affidavit it was "to placate
9 and treat the citizen kindly and to maintain order."

10 Had there been reports of disorder and unkind
11 treatment?

12 A I believe the meaning of this second para-
13 graph is that these units were given orders to do so.
14 As I don't have my affidavit on hand --

15 Q Weren't the first units that went in given
16 orders to do so too?

17 A Yes.

18 Q And were there reports of ill treatment toward
19 the citizens of Nanking before this special unit was
20 sent in?

21 A I should like to have my affidavit shown to me.
22 I think you are confusing the first units that entered
23 the city with the units who entered later to mop up
24 the remnants.
25

BRIGADIER NOLAN: Might the witness be shown

1 sent in "in order to placate and treat the citizen
2 kindly and to maintain order."

3 Had there been reports of outrages or atrocii-
4 ties which caused the dispatch of this special unit
5 into the city?

6 A The two battalions were sent into the city
7 to mop up remnants -- enemy remnants.

8 Q You say in your affidavit it was "to placate
9 and treat the citizen kindly and to maintain order."

10 Had there been reports of disorder and unkind
11 treatment?

12 A I believe the meaning of this second para-
13 graph is that these units were given orders to do so.
14 As I don't have my affidavit on hand --

15 Q Weren't the first units that went in given
16 orders to do so too?

17 A Yes.

18 Q And were there reports of ill treatment toward
19 the citizens of Nanking before this special unit was
20 sent in?

21 A I should like to have my affidavit shown to me.
22 I think you are confusing the first units that entered
23 the city with the units who entered later to mop up
24 the remnants.
25

BRIGADIER NOLAN: Might the witness be shown

the original Japanese of exhibit No. 3398?

(Whereupon, a document was
handed to the witness.)

Will the witness direct his attention to
the last portion of paragraph 2 in the English?

THE WITNESS: The words of my affidavit are
as follows: "We were ordered by General MATSUI at
the time of entry into the city to send a select unit
in order to placate and treat the citizens kindly
and maintain order."

Q Did you omit the word "triumphal" in that
translation?

A Yes. My meaning is simply "entry into the
city."

Q All right.

A I feel that what you have been telling me --
in what you have been telling me up to now you have
been confusing this with paragraph 4: "... at the
dawn of December 13, 1937, about two battalions were
sent into the city in order to sweep certain areas,"
and the names of the areas are given. I believe you
confused this with the part of paragraph 2 that you
have been citing: "We were ordered by General MATSUI
to send a select unit in order to placate and treat
the citizens kindly," etc.

1 Q Will you direct your attention, please, to
2 the second paragraph of section 4 of your affidavit
3 in which you say that on the 23rd of December part
4 of the 16th Division substituted for another unit which
5 had entered the city previously.

6 What was the other unit?

7 A It was a unit belonging to another division.

8 Q Obviously, but what was the number of it?

9 A The 9th Division.

10 Q What other divisions were within the walls of
11 the city after the fall besides the 9th and 16th?

12 A I don't know the names of any units other than
13 those belonging to the 9th Division. I didn't know
14 any divisions except that one which was in front of
15 our division and those which were on both sides.

16 Q And what were they?

17 A The 9th Division was on our left and then there
18 were divisions belonging to the 10th Army on the other
19 sides, but I have forgotten which division was to the
20 right and which division was to the left. I have
21 forgotten their numbers.

22 Q In paragraph 10 of your affidavit you state
23 that you did receive reports from the military police
24 of a few instances of plunder committed by Japanese
25 soldiers. Was that in Nanking?

1 A Yes, inside the city walls.

2 Q How many instances were there?

3 A I have forgotten the number.

4 Q What was taken?

5 A Goods of little value.

6 Q What kind of goods?

7 A According to my recollection, there were a
8 few articles of daily use -- some food and things
9 of that nature.

10 Q Will you look at paragraph 11 of your affi-
11 davit, at the very end of that paragraph, in which you
12 state that sometimes soldiers could not help raiding
13 places that impressed them as being dangerous, and
14 you go on to say that these raids gave rise to all
15 kinds of complications. What kinds of complications?

16 A Well, our soldiers would see a foreign flag
17 flying but would believe they were flags being used
18 by the Chinese forces under false pretences. They
19 would go to these places and would then find that
20 these foreign flags actually did represent foreign
21 residences, and the foreigners living there would be
22 irritated.
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1 Q In paragraph 12 you say, "There were a few
2 scattered offenses concerning discipline." What kind of
3 offenses were these, General?

4 A For instance, attempts to enter refugee areas,
5 attempts to cohabit with Chinese women; things of that
6 nature, I believe.

7 Q By that you mean the offense of illegal entry
8 and rape, or the attempt to commit such offenses?

9 A There were some attempts, and I believe also
10 that in cases of rape there were some actual cases.

11 Q How many were there?

12 A I don't recall. I believe they were few in
13 number.

14 Q In paragraph 13 of your affidavit, in speaking
15 about places where bodies were buried, you refer to
16 evidence presented by the prosecution. What evidence
17 are you referring to?

18 A I have forgotten the number of the document,
19 but it is a document which was published by the
20 charitable -- which originated from the charitable
21 organization in Nanking.

22 Q Well, are you suggesting that the numbers of
23 bodies buried were the bodies of soldiers who fell in
24 the fighting within the walls of Nanking?

25 A Yes. Not merely within the city walls, but

1 the greater number of them were found in the fortified
2 areas immediately outside the city walls.

3 Q And were there women and children amongst the
4 number?

5 A What do you mean by that?

6 Q Well, in the number of dead that were picked up,
7 according to the evidence of the prosecution there were
8 women and children. Were these killed outside the wall?

9 A Since I am not testifying that I saw these
10 bodies myself, I do not know.

11 Q Then you don't know where they came from, do
12 you?

13 A I am not speaking of bodies I saw myself. I
14 was referring to the evidence presented by the prosecu-
15 tion.

16 Q And you were endeavoring to explain it away
17 by something of which you have no personal knowledge?

18 A I wanted to say -- What I wanted to say was
19 that the bodies referred to in the evidence presented
20 by the prosecution were found in fortified areas -- were
21 found in the area of battle, and furthermore, I wanted
22 to say that these bodies were the bodies of soldiers.

23 Q Did you see the bodies?

24 A Yes.

25 Q How many were there?

1 A I don't recall the number, but I do remember
2 having seen dead bodies lying on the battlefield. How-
3 ever, I do not mean by this to say that I saw all the
4 bodies referred to in the prosecution's evidence. I
5 merely wish to say that I did see some bodies on the
6 battlefield.

7 Q In paragraph 14 of your affidavit, the last
8 paragraph, mention is made of an inaugural ceremony on
9 the 1st of January 1938 of the Assembly of the Mainte-
10 nance of Public Order, and you go on to say that the
11 gathering was in the public square in front of Kulou,
12 the place of the ceremony, and thousands upon thousands
13 of Chinese cheered.

14 That was the day that the Russian Embassy was
15 burned?

16 A Yes.

17 Q Did you see the burning?

18 A Yes.

19 Q Who set it on fire?

20 A I don't know.

21 BRIGADIER NOLAN: That is all I have to ask.

22 THE PRESIDENT: I have some questions on be-
23 half of Members of the Tribunal.

24 BY THE PRESIDENT:

25 Q What was your rank when you were Chief of Staff

of the 16th Army?

1 A Chief of Staff of a division.

2 Q What rank of general officer?

3 A I was a colonel.

4 Q When were you promoted to lieutenant-general?

5 A In October of 1941.

6 Q Were you decorated for your part in the capture
7 of Nanking?

8 A I do not know whether the decoration was for
9 the fighting in that Nanking area itself or not.

10 Q Who was the Commander of the 16th Division at
11 the time of entry into Nanking?

12 A Lieutenant-General NAKAJIMA, Kasago.

13 Q Where is he?

14 A He has passed away.

15 Q Who were the Chinese members of the commission
16 that was organized after the entry into Nanking?

17 A I do not remember.

18 Q What happened to the Chinese stragglers who
19 were turned over to the headquarters of the Shanghai
20 Expeditionary Force?

21 A They were treated as prisoners of war.

22 Q Were they tried for any offense?

23 A That is a matter for superior headquarters.

24 I do not know what happened later.

1 THE PRESIDENT: Yes. That is all. I have no
2 further questions on behalf of any Member of the Tri-
3 bunal.

4 MR. MATTICE: No redirect examination, if your
5 Honor please.

6 May the witness be excused?

7 THE PRESIDENT: He is excused on the usual
8 terms.

9 (Whereupon, the witness was e -
10 cused.)

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1 MR. MATTICE: We now call the witness IINUMA,
2 Mamoru.

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4 M A M O R U I I N U M A, recalled as a witness on
5 behalf of the defense, having been previously
6 sworn, testified through Japanese interpreters as
7 follows:

8 THE PRESIDENT: He is still on his former
9 oath.

10 MR. MATTICE: May the witness be sworn --
11 strike.

12 THE PRESIDENT: I understand he has already
13 been sworn; I may be mistaken.

14 MR. MATTICE: Yes. May the witness be
15 shown defense document 2626?

16 DIRECT EXAMINATION

17 BY MR. MATTICE:

18 Q Is that your affidavit, Mr. Witness?

19 A Yes.

20 Q Are the matters and things contained therein
21 true?

22 A Yes, they are.

23 MR. MATTICE: Offered in evidence, if the
24 Tribunal please.

25 THE PRESIDENT: Admitted on the usual terms.

1 CLERK OF THE COURT: Defense document 2626
2 will receive exhibit No. 3399.

3 (Whereupon, the document above
4 referred to was marked defense exhibit
5 No. 3399 and received in evidence.)

6 THE PRESIDENT: Has this witness been
7 sworn before? We seem to think he has been but we
8 must make sure of it.

9 MR. MATTICE: Let me inquire.

10 Mr. Witness--

11 THE PRESIDENT: Do not ask him. We will
12 have to ascertain independently. Captain Van Meter
13 says he has been and he knows them all.

14 MARSHAL OF THE COURT: Mr. President, our
15 records show that this witness has appeared before
16 the Tribunal previously.

17 THE PRESIDENT: We must ascertain this
18 independently, but I will ask him whether he has
19 given evidence before this Tribunal before.

20 MR. MATTICE: You may answer, Mr. Witness.

21 THE WITNESS: Yes, I have appeared on this
22 witness stand before.

23 MR. MATTICE: I will read exhibit 3399,
24 beginning at paragraph numbered 2:

25 "2. I am ex-Lieutenant-General. When the

1 Expeditionary Force in Shanghai was organized, I was
2 appointed the Chief of Staff under Commander in Chief
3 MATSUI and participated in the battles of Shanghai
4 and Nanking.

5 "3. After the Expeditionary Force in
6 Shanghai was organized General MATSUI gave officers
7 under him the following instruction and ordered them
8 to drive it home to their men.

9 "(1) The battle in the vicinity of Shanghai
10 is aimed at the subjugation of Chinese Army challeng-
11 ing us, therefore protect and patronize Chinese
12 officials and people as far as possible.

13 "(2) Always bear in mind not to involve
14 foreign residents and armies in trouble and maintain
15 close liaison with foreign authorities in order to
16 avoid misunderstanding.

17 "4. Officers and men took unusual trouble
18 to carry out the above instruction. During the battle
19 of Shanghai, Chinese soldiers and people, as well as
20 Japanese Army personnel, were given medical treatment
21 and medicines were distributed among them to prevent
22 infectious diseases from spreading. When the Japanese
23 Army attacked the southern district of Shanghai
24 (Nanshin), the units in the front line took incon-
25 ceivable pains technically not to drop shells on the

1 district so that the peace and order of the City was
2 maintained.

3 "The above instruction was repeatedly given
4 on all occasions and its execution was strictly super-
5 vised even until after the battle of Nanking.

6 "5. Immediately after the battle of
7 Shanghai General MATSUI interviewed the representa-
8 tives of America, England, France, etc., and apologized
9 for the damage on their nationals. He clarified
10 Japan's position under the circumstances and requested
11 them to cooperate with us in bringing the war to the
12 conclusion in a short space of time. Never was I
13 given from General MATSUI any order whatsoever to
14 make light of foreign rights and interests and never
15 did I see or hear that the officers and men under his
16 command perpetrated such deeds.

17 "6. On December 2, 1937, the Expeditionary
18 Force in Shanghai was ordered to capture Nanking. At
19 that time General MATSUI in the capacity of Commander
20 in Chief of the Central China Army Groups gave a
21 detailed instruction concerning the capture of Nanking.
22 I, as Chief of Staff, transmitted to the units under
23 MATSUI the order to capture Nanking and at the same
24 time admonished them 'to be tolerant and benevolent
25 towards Chinese soldiers (if they do not dare to

1 resist) as well as people, and pacify and protect
2 them."

3 The seventh paragraph I will omit reading.
4 Eighth paragraph on page 4:

5 "8. On December 10, the order to attack
6 the castle of Nanking was issued.

7 "It was 33d Infantry Regiment, 16th
8 Division, that attacked Mt. Tzekin-shan."--

9 We will omit the reading of that paragraph
10 also.

11 Paragraph 9 on page 5:

12 "9. Despite the fact that at the fall of
13 Nanking nearly all of principal houses outside the
14 walls of the city were burnt or destroyed and there
15 was no house to quarter Japanese Army, more troops than
16 expected entered the city. So by General MATSUI's
17 order I made all the troops, except 16th Division,
18 retire to far-off eastern districts, and intended to
19 restore the order of the city by ordering them to
20 maintain strict military discipline and public morals.

21 "10. I made three inspection tours on each
22 day, December 16, 20 and 31, 1937, but found no corpse
23 in the streets. In the neighborhood of Siakwan I saw
24 scores of bodies of soldiers killed in battle but as
25 for the alleged tens of thousands of slaughtered bodies

1 never did I see them even in a dream. I admit that
2 there were small fires but never did I see a case of
3 intentional incendiarism nor receive a report about
4 it. In the city within the castle walls there were
5 a few burnt houses, but nearly all of them remained
6 as they had been. I always gave instruction to
7 Japanese army to pay careful attention to fire,
8 warning them heavy responsibility for it.

9 "11. After the entry to Nanking a few cases
10 of plunder and outrage were reported to General
11 MATSUI. He regretted that these unlawful acts were
12 done despite his repeated instructions. He instructed
13 the officers to do their best to prevent the occurrence
14 of misdeed and insisted on a severe punishment on
15 lawlessness. Consequently such offenders were
16 punished. Afterward, military discipline was strictly
17 maintained and I heard that even 16th Division lodged
18 a protest against the procedure of Legal Department.
19

20 "12. I was told that some troops removed
21 articles of furniture but they said that they did
22 so to facilitate quartering. They said that in
23 requisition they compensated for the loss, but in most
24 cases managers fled, so they put up a note to guaran-
25 tee the compensation in quartering. A few soldiers
removed articles of furniture privately and some

1 removed articles of furniture belonging to
2 foreigners, but the matter was settled by returning
3 the articles in question to their owners or by
4 compensating for the loss, the offenders being
5 punished. Of course Army Headquarters did never
6 order to commit unlawful acts nor admitted them.

7 "13. As for the management of refugee
8 district in Nanking, I ordered 16th Division to
9 guard and protect the place, and admission to and
10 from the place was limited to those who possessed
11 certificates and military police guarded the place.
12 Therefore, I believe the place cannot have been en-
13 croached on by men collectively, systematically or
14 continuously. Neither did I hear of or see many
15 incidents as proved by the prosecutor; consequently
16 never did I make a like report to Commander in
17 Chief MATSUI who naturally never heard of such
18 incidents.

19
20 "14. I did not know that many protests had
21 been made by the Nanking Security District Committee,
22 so I never reported it to General MATSUI."

23 Cross-examine.
24
25

1 THE PRESIDENT: Brigadier Nolan.

2 BRIGADIER NOLAN: May it please the Tribunal.

3 CROSS-EXAMINATION

4 BY BRIGADIER NOLAN:

5 Q General IINUMA, what was your rank when you
6 were Chief of Staff under General MATSUI in 1937?

7 A I was Major General.

8 Q The attack on the city of Nanking was under-
9 taken by two armies, the 10th and the Shanghai Expe-
10 ditionary Force; is that so?

11 A Yes, that is so.

12 Q And General YANAGAWA commanded the 10th Army
13 and Prince ASAKA the Shanghai Expeditionary Force?

14 A Yes, that is so.

15 Q The Shanghai Expeditionary Force which at-
16 tacked Nanking consisted of the 3rd, 9th, 11th, 13th
17 and 16th Divisions, is that so?

18 A There is a slight difference.

19 Q What is it, please?

20 A Almost all of the 9th and 16th Divisions did
21 take part. A part of the 3rd Division did take part.
22 A part of the 13th Division was to have taken part
23 also, but they did not arrive in time to participate
24 in the fighting around the walls of Nanking.
25

Almost all of the 16th and 9th Divisions, a

1 part of the 3rd Division, and a part of the 13th
2 Division was supposed to reinforce our forces; but,
3 as they were late, they were not in time to join in the
4 fighting up to the fall of Nanking.

5 THE MONITOR: The last interpretation stands.

6 Q And now, General, you have told me all the
7 divisions who didn't attack Nanking. Tell me those
8 that did, please.

9 A Those that I just mentioned did participate.

10 Q And of the Shanghai Expeditionary -- and
11 of the 10th Army, I beg your pardon, the 6th, 8th
12 and 114th divisions participated; is that so?

13 A I do not know the details concerning the 10th
14 Army, but I believe the units which participated were
15 parts of the 114th Division, the 8th Division, and
16 a part of the 6th.

17 THE MONITOR: Correction again: 114th and
18 the 6th and a portion or part of the 8th Division.

19 BRIGADIER NOLAN: Might the witness be shown,
20 please, his Japanese copy of exhibit 3399?

21 (Whereupon, a document was handed
22 to the witness.)

23 Q If you will please look at paragraph 10, you
24 will see that you make reference to the neighborhood
25 of Siakwan where you saw scores of bodies of soldiers

killed in battle.

1 A Yes.

2 Q Where is Siakwan, General IINUMA?

3 A It is outside the city walls of Nanking,
4 to the west, on the banks of the Yangtze River.

5 Q In the same paragraph you say that you made
6 inspection tours on the 16th, 20th and 31st of De-
7 cember. Were you in Nanking throughout that period
8 or did you return on those later dates of the 20th
9 and 31st?
10

11 A Our headquarters were practically just outside
12 of Nanking, and on the 16th and on the 20th I went
13 specially to Nanking from our headquarters for this
14 inspection tour.

15 Q And when you say "our headquarters," do you
16 mean General MATSUI's headquarters?

17 A No, Prince ASAKA's headquarters.

18 Q But were you not Chief of Staff to General
19 MATSUI?

20 A Up to the beginning of December I was.

21 Q And after that you became Chief of Staff of
22 the Army of General ASAKA?
23

24 A Yes.

25 Q Did you see any of the complaints which were
made by the foreign citizens in the city of Nanking

1 beginning about the 13th of December, 1937 and ending
2 in February of 1938?

3 A No, I haven't.

4 Q Did you see any of them?

5 A None at all.

6 Q Did you know that the foreign residents had
7 complained?

8 A I did not know whether the foreign resi-
9 dents had protested, but I heard of incidents such
10 as the stealing of a piano or of an automobile after
11 the incidents had occurred and took appropriate meas-
12 ures.

13 Q What unit are you referring to, the person-
14 nel of which stole a piano?

15 A I don't remember.

16 Q Did you hear of any cases of murder or rape?

17 A Yes. Not of murder though.

18 Q Of rape. When did you hear of that?

19 A I don't remember the date. Anyway, it was
20 after our headquarters moved into Nanking.

21 Q And how long was that after the fall of the
22 city?

23 A It was after the 25th or 26th of December.

24 Q Well, General MATSUI knew about these before
25 you did, according to your affidavit; is that a fact?

A I believe that is possible.

1 Q Well, if you look at paragraph 11 of your
2 affidavit, it may refresh your memory. It says,
3 "After the entry to Nanking a few cases of plunder
4 and outrage were reported to General MATSUI." How
5 long after the entry?
6

7 A By the words "after the entry to Nanking"
8 I do not mean after the entry of our headquarters to
9 Nanking but after our troops took Nanking.

10 Q So do I, and how long after that was it?

11 A Two or three days later.

12 Q Who told General MATSUI?

13 A I believe it must have been the military
14 police.

15 Q Did you tell him?

16 A No.

17 Q Did the Japanese Consul General tell him?

18 A That I do not know.

19 Q Do you know whether his divisional command-
20 ers told him?

21 A I don't think that was possible.

22 Q Why not?

23 A The chain of command is different.

24 Q How is it different?

25 A Well, the system -- if a divisional commander

1 wanted to report anything, either the commander of
2 the division or his Chief of Staff would report it
3 to the Chief of Staff, to General MATSUI, or to --
4 would report it to the Chief of Staff of the Army or
5 to Prince ASAKA, and from there it would go to Gen-
6 eral MATSUI.

7 Q On the day of the triumphal entry into the
8 city, the 17th of December, were you present?

9 A Yes.

10 Q Were all the Army commanders, their chiefs
11 of staff, the divisional commanders and their chiefs
12 of staff present at that time?

13 A The commander of the 13th Division and his
14 chief of staff did not attend.

15 Q All the rest did?

16 A Yes.

17 THE PRESIDENT: We will adjourn until half-
18 past nine tomorrow morning.

19 (Whereupon, at 1600, an adjourn-
20 ment was taken until Friday, 7 November,
21 1947 at 0930.)
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